

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA, :
 : CASE NO. 1:21-CR-0085
Plaintiff, :
vs. : **SENTENCING HEARING**
 :
TRES GENCO, : February 29, 2024
 : 10:01 a.m.
Defendant. :

- - -

**TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUSAN J. DLOTT, JUDGE**

- - -

APPEARANCES:

For the Plaintiff:

Megan Gaffney-Painter, Esq.
Timothy S. Mangan, Esq.
Assistant United States Attorneys
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202

For the Defendant:

Richard W. Monahan, Esq.
Federal Public Defender
250 East Fifth Street, Suite 350
Cincinnati, Ohio 45202

Also present: FBI Special Agent Patrick Andrew Gagan
Tres Genco, Defendant

Law Clerks: Jennifer Johnson, Esq.

Courtroom Deputy: William Miller

Stenographer: Lisa Conley Yungblut, RDR, RMR, CRR, CRC
United States District Court
100 East Fifth Street
Cincinnati, Ohio 45202

Proceedings recorded in stenotype.

Transcript produced with computer-aided transcription.

PROCEEDINGS

(Proceedings held in open court at 10:01 a.m.)

THE DEPUTY: All rise. This court is now in session pursuant to the recess, The Honorable Judge Susan J. Dlott presiding. Please be seated. *United States of America versus Tres Genco*, Case No. 1:21-CR-85.

THE COURT: Good morning to everyone. Let me ask counsel to please enter their appearances for the record. Ms. Gaffney-Painter.

MS. GAFFNEY-PAINTER: Good morning, Your Honor. Megan Gaffney-Painter and Tim Mangan on behalf of the United States. And with us at counsel's table is Special Agent Patrick Andrew Gragan with the FBI.

THE COURT: How does he spell his last name?

MS. GAFFNEY-PAINTER: G-R-A-G-A-N.

THE COURT: Thank you. Mr. Monahan.

MR. MONAHAN: Good morning, Your Honor. Richard Monahan on behalf of the Defendant, Tres Genco, who is seated present with me at counsel table in the custody of the marshals.

THE COURT: Thank you very much, Mr. Monahan.

And are you Tres Genco?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And are you represented in this proceeding by Richard Monahan, an attorney who's present

1 here in court with you today?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: On a former day, the Defendant pleaded
4 guilty to attempted hate crime. At that time the matter was
5 referred to the United States Probation Department for a
6 presentence investigation and report. The Court has
7 received the presentence report prepared April 27th, 2023.

8 The Court has also received and reviewed the following
9 documents relevant to sentencing: The government's
10 sentencing memorandum filed on June 26th, 2023, which is
11 Document 67; the Defendant's sentencing memorandum filed
12 June 26th, 2023, which is Document 68; letters the Court
13 received on June 26th, 2023 from Tres Genco; Sarah Franks,
14 his mother; David Fulcher, the director of MANA, M-A-N-A;
15 Phillip Charles Nea, N-E-A; and Hung Phung, P-H-U-N-G. The
16 Court has also received a psychological examination report
17 done on the Defendant on October 13th, 2023, which is
18 Document 69.

19 And the Court -- in addition to that, the Court has
20 also received Defendant's supplemental memorandum that was
21 filed November 3rd, 2023, which is Document 70; the
22 government's supplemental memorandum filed November 6th,
23 2023, which is Document 71; and, finally, the government's
24 second supplemental sentencing memorandum that was filed
25 yesterday, on February 29th, 2024, it's Document 73, and it

1 was filed at 9:12 p.m. last night; and the Defendant's
2 response to the government's second supplemental memorandum
3 filed on 2/29/24, which is Document 74, and that was filed
4 at midnight.

5 Counsel, I worked late yesterday afternoon and evening
6 to make sure that I had everything ready for the
7 sentencings, but I didn't exactly anticipate midnight
8 filings, but with the help of my law clerk, Jennifer
9 Johnson, I've been able to review them completely.

10 Any questions on that before the Court goes on?

11 MS. GAFFNEY-PAINTER: Not from the government.
12 Thank you.

13 MR. MONAHAN: No, Your Honor.

14 THE COURT: Thank you. Okay. Defense counsel --
15 let me first then talk about the factual findings for
16 sentencing. Defense counsel has put forth one objection and
17 numerous clarifications to the presentence report in this
18 case. I'll ask counsel to address those objections
19 momentarily. First, however, I would like to address the
20 factual findings for sentencing.

21 Before the Court accepts the presentence report as part
22 of the sentencing facts in this case and proceeds to address
23 any additional sentencing facts the parties wish to present,
24 I want to put on the record the Court's method for
25 determining a sentence. This Court considers the factors

1 discussed in the Advisory Sentencing Guidelines along with
2 other factors, such as those contained in 18 United States
3 Code Section 3553(a), in arriving at a sentence.

4 Let me ask counsel, are any of the facts other than
5 those in the objections that are reported in the presentence
6 report disputed by the government or the Defendant, Ms.
7 Gaffney-Painter?

8 MS. GAFFNEY-PAINTER: Not by the government, Your
9 Honor.

10 THE COURT: Mr. Monahan?

11 MR. MONAHAN: No, Your Honor.

12 THE COURT: Okay. Since you're seated at counsel
13 table, you can remain seated, if you would like, even when
14 you address the Court. It's up to you. If you feel you
15 have to stand, that's fine, but, otherwise, please feel
16 comfortable to stay seated.

17 Mr. Monahan -- let's see. Mr. Monahan, did I ask you
18 about additional sentencing facts?

19 MR. MONAHAN: You did, Your Honor, and I do not
20 have any.

21 THE COURT: Okay. All right. And, Ms.
22 Gaffney-Painter, did I ask you about those as well?

23 MS. GAFFNEY-PAINTER: You did, Your Honor.

24 THE COURT: Okay. All right. Then, there being no
25 objections other than those previously mentioned to the

1 factual statements contained in the presentence report, the
2 Court adopts those statements as its finding of fact. The
3 Defendant has entered a valid plea to Count 1 of the
4 indictment. Accordingly, the Defendant is adjudged guilty
5 in Case No. 1:21-CR-85 of attempted hate crime. Pursuant to
6 18 United States Code Section 3553(a) and C, the Court makes
7 the following findings of relevant facts significant to the
8 imposition of sentence.

9 The Defendant is guilty of violating 18 United States
10 Code Section 249(a)(2) and (a)(2)(A)(ii)(II), a Class A
11 felony, which subjects the Defendant to up to life
12 imprisonment, a fine of up to \$250,000, a period of
13 supervised release of up to 5 years, restitution, and a \$100
14 special assessment.

15 Next, I'd like to deal with the issue of objections.
16 The Court has already issued a written ruling on Mr. Genco's
17 objection to the calculation of his base offense level. Are
18 there any other objections to the presentence report that
19 have not been previously raised?

20 MR. MONAHAN: No, Your Honor. Given the Court's
21 presentence written ruling regarding our objections, which I
22 think we, both parties, briefed adequately and preserved any
23 issues related to, we have no additional issues to raise as
24 far as objections.

25 THE COURT: Thank you, Mr. Monahan.

1 Ms. Gaffney-Painter?

2 MS. GAFFNEY-PAINTER: That's a correct summary,
3 Your Honor.

4 THE COURT: Okay. Thank you. Then, the Court
5 notes that there are no additional objections from either
6 the Defendant or the government as to the application of the
7 guidelines or the facts contained in the presentence report.

8 Let me go over with you what the suggested federal
9 sentencing guidelines are. Mr. Genco pled guilty to
10 attempted hate crime in violation of Title 18 United States
11 Code Section 249(a)(2) and (a)(2)(A)(ii). In accordance
12 with the provisions of Title 18 United States Code
13 Section 3553(c), the Court places on the record the
14 following statement of reasons.

15 The applicable Sentencing Guidelines Manual is the 2023
16 edition. I know that the original presentence report used
17 the 2021 edition, which was in effect at the time the
18 presentence report was written, but the Court has conferred
19 with Ms. Connerty of the probation department who was the
20 author of that report, and the 2023 edition would not make
21 any changes.

22 The guideline for a violation of 18 United States Code
23 Section 249(a)(2) and (a)(2)(A)(ii) is Sentencing Guideline
24 Section 2H1.1. Pursuant to Subsection (a)(1), the offense
25 level is the level from the offense guideline applicable to

1 any underlying offense. Application Note 1 instructs,
2 quote, "the offense guideline applicable to any underlying
3 offense," unquote, means the offense guideline applicable to
4 any other conduct established by the offense of conviction
5 that constitutes an offense under federal, state or local
6 law other than an offense that is itself covered under
7 Chapter 2, Part H, Subpart 1. The offense of conviction is
8 attempted hate crime, and the subject -- and, I'm sorry, and
9 the subsection the Defendant pled guilty to includes an
10 attempt to kill; therefore, the underlying offense is
11 attempted murder. Sentencing Guideline Section 2A1.2
12 references assault with intent to commit murder slash
13 attempted murder and was utilized to determine the base
14 offense level.

15 Sentencing Guideline Section 2A1.2(a)(1) instructs the
16 base offense level is 33 if the object of the offense if
17 carried out would have constituted first degree murder.
18 Application Note 1 defines first degree murder as the
19 conduct defined in 18 United States Code Section 1111, which
20 identifies murder as the unlawful killing of a human being
21 with malice aforethought, which is also called
22 premeditation. As Mr. Genco planned to kill women, which
23 included writing about the killing and planning the killing,
24 the base offense level is 33.

25 Sentencing Guideline Section 3A1.1(a) instructs that a

1 three-level increase is appropriate if the Court at
2 sentencing determines beyond a reasonable doubt that the
3 defendant intentionally selected any victim or any property
4 as the object of the offense of conviction based on the
5 actual, real or perceived race, color, religion, national
6 origin, ethnicity, gender, disability or sexual orientation.
7 Mr. Genco initially selected women as victims of his
8 offense; therefore, three levels are added. That makes the
9 adjusted offense Level 36.

10 Pursuant to Sentencing Guideline Section 3E1.1(a) and
11 (b), the offense level is decreased by three levels because
12 Mr. Genco accepted responsibility for his role in the
13 offense and entered a timely plea. The total offense level
14 is 33.

15 The Court finds the defendant has zero criminal history
16 points, which establishes a criminal history category of
17 Roman Numeral I. Based on a total offense level of 33 and a
18 criminal history category of Roman Numeral I, the guideline
19 imprisonment range is 135 to 168 months, which falls in Zone
20 D of the sentencing table. Because the guideline range of
21 imprisonment falls within Zone D of the sentencing table,
22 the minimum term shall be satisfied by a sentence of
23 imprisonment. A sentence of probation is not authorized
24 pursuant to Sentencing Guideline Section 5B1.1, Comment Note
25 2. The authorized term of supervised release is at least

1 two but not more than five years pursuant to Sentencing
2 Guideline Section 5D1.2(a)(1). There is a \$100 special
3 assessment which is mandatory. The guideline range for a
4 fine is from 35,000 to \$250,000 according to Sentencing
5 Guideline Section 5E1.2(c)(3). Restitution is not
6 applicable.

7 And, Mr. Genco, I failed to say at the beginning of the
8 hearing, if there's anything that I say that you don't
9 understand, please know that you can take time to ask Mr.
10 Monahan to explain it to you or ask the Court to repeat it,
11 that would -- that's perfectly fine with the Court.

12 Next, then, the Court would like to address the
13 sentencing factors under 18 United States Code
14 Section 3553(a). Pursuant to 18 United States Code
15 Section 3553(a), when imposing sentence, the Court must
16 consider the history and characteristics of Mr. Genco, the
17 nature and circumstances of the offense, the need to protect
18 the public from future crime on the part of Mr. Genco,
19 general deterrence, and the need to provide a punishment
20 that is sufficient but not greater than necessary to achieve
21 the goals of sentencing.

22 The offense conduct here is very serious. Mr. Genco
23 pled guilty to an attempted hate crime. Hate crimes can
24 range in severity, and this is one of the most serious ones
25 the Court has ever had. Mr. Genco admitted in the statement

1 of facts to his plea agreement that his conduct included,
2 quote, "an attempt to kill women through the use of a
3 firearm and a dangerous weapon," unquote, and that he,
4 quote, "formulated a plot to kill women and intended to
5 carry it out," unquote. He admits that he was a member of a
6 radicalized group, the incel movement, which harbors hatred
7 and espouses violence towards women for failure to engage in
8 sexual activity with its members.

9 Mr. Genco's guideline range is high here because we are
10 looking at the underlying conduct of attempted murder. What
11 troubles me in this case is that, in addition to his
12 admission of an attempt to kill and intention to carry that
13 out, Mr. Genco took some very specific and what I consider
14 to be escalating steps to go through with this plot. The
15 probation officer outlined this conduct in the presentence
16 report and I'm going to highlight some of that.

17 And I just want to thank the probation officer on the
18 record for doing such an excellent job on this presentence
19 report. I know it was difficult, Ms. Connerty, and I really
20 appreciate all of your hard work.

21 From January 2019 to his arrest on March 12, 2020, Mr.
22 Genco was a member of the incel movement. He wrote about
23 conducting a shooting suggested -- suggesting in one note
24 that KC, or kill count, needed to be big, quote, 3,000,
25 unquote. He wrote about obtaining military training to

1 further this goal and, in fact, did obtain some basic
2 training, ultimately being discharged from the military. He
3 also wrote about his desire to murder women in disturbing
4 writings signing one note, quote, your hopeful friend and
5 murderer, unquote.

6 He conducted concern -- he conducted concerning
7 internet searches. Among the topics searched were for
8 sororities and a university in Ohio. He researched gun
9 modifications and saved illustrated guides for the
10 construction of M-16s. He searched the internet for a
11 variety of related topics, including planning a shooting
12 crime, quote/unquote. Shortly before his arrest, he
13 conducted an internet search of police scanner codes for
14 Columbus, Ohio and university police agencies. He acquired
15 an AR-15 rifle modified with a bump stock, loaded magazines,
16 body armor, and boxes of ammunition. When he was arrested,
17 these items were in the trunk of his car. Officers also
18 located a handgun that was hidden in a vent in his bedroom.

19 Mr. Genco had the means and apparently the desire to
20 follow through with this horrible plan. This is not a
21 standard attempted hate crime. The underlying conduct here
22 is very serious. And what I keep going back to is that, Mr.
23 Genco, you admitted that you had a plan to kill women and
24 you intended to carry that out. Thankfully, your plans were
25 thwarted by the interference of law enforcement.

1 As to the history and characteristics of Mr. Genco, the
2 instant offense represents Mr. Genco's first interaction
3 with the criminal justice system. He was sentenced to a
4 17-month term of imprisonment out of Highland County Common
5 Pleas Court for behaviors considered relevant conduct. Mr.
6 Genco was raised in a chaotic and highly dysfunctional
7 environment. He stated his mother provided adequate food,
8 shelter, and clothing; however, she struggled with
9 significant mental health issues which adversely impacted
10 his childhood. He described that his mother suffered from
11 mental illness and pain pill addiction. She was verbally
12 abusive and controlling. Her behaviors towards Mr. Genco
13 caused him to suffer from depression and social anxiety.
14 Mr. Genco noted he has worked on his social anxiety in the
15 Butler County jail and has benefitted from the services he
16 has received.

17 Mr. Genco also suffers from mental health issues. The
18 Court ordered a psychological evaluation in this case prior
19 to sentencing, which it has reviewed along with his prior
20 evaluation. The government argues that the recent report
21 was incomplete and that the doctor's risk assessment scores
22 are inaccurate. The doctor who examined Mr. Genco most
23 recently determined that he suffers from Bipolar 1 disorder
24 and alcohol use disorder. That doctor indicated that, if
25 Mr. Genco abstains from alcohol use, which was a maladaptive

1 attempt to cope, and maintains psychiatric stability, which
2 is possible with treatment and monitoring, his risk of
3 violence is low. Mr. Genco, I recommend that you obtain
4 mental health counseling and alcohol abuse treatment while
5 in custody.

6 In addition, I note that your lawyer asserts that you
7 have abandoned the incel movement and no longer identify
8 with those views; although, the government disputes this.
9 If you have left this radical belief system, that is a very
10 positive development in your rehabilitation.

11 Mr. Genco has a history of employment; however, he
12 could benefit from vocational training or an apprenticeship
13 program. Mr. Genco does not have any medical needs that
14 require treatment, except for possibly psychological drugs.
15 He requested a dental visit for a routine cleaning and
16 check-up.

17 He is not married and does not have any children. He
18 hopes to have children in the future. Mr. Genco received a
19 high school diploma through California and has attended some
20 college. He plans to return to college and achieve a
21 degree. He is 24 years old.

22 The need to protect the public from future crimes of
23 Mr. Genco is high in this case given the severity of the
24 underlying conduct. Without the involvement of law
25 enforcement, the outcome of this case could have looked a

1 lot different. Here, the Court must not only deter
2 attempted hate crimes, but also gun violence and attempted
3 murder. Protecting the loss of innocent lives is a huge
4 priority in this case and one the Court takes very
5 seriously. Based on the Court's limited knowledge of mass
6 shooting, oftentimes, we don't get the opportunity to
7 intervene. I am incredibly grateful that the opportunity to
8 intervene occurred here. However, the sentence reflects the
9 severity of the underlying conduct here and the desire to
10 protect the public from future crime.

11 Mr. Genco, I am taking into account that you've had
12 some challenges in your life, including your mental health
13 and upbringing. Given that you have suffered from a highly
14 dysfunctional childhood and that you, yourself, suffer from
15 serious mental health issues, the Court finds that a
16 variance is warranted.

17 However, Mr. Genco, you are still looking at a
18 significant sentence. I hope that the sentence in this case
19 allows time such that, when you do get released, you can
20 become a productive member of society. If you take the
21 doctor's report at face value, Mr. Genco, if you can stay in
22 treatment and take your mental health seriously, the doctor
23 believes that you can be a productive member of society when
24 you are released. We all want that for you, not just for
25 your own health, but for the health and safety of the

1 community as well.

2 Mr. Genco's total offense level is 33 and his criminal
3 history category is I, which results in a guideline
4 imprisonment range of 135 months to 168 months. The parties
5 have agreed upon a sentence in this case that Mr. Genco
6 shall serve up to 150 months in prison. Restitution is not
7 an issue in this case.

8 Any questions before I go on further?

9 MS. GAFFNEY-PAINTER: Not from the government.
10 Thank you.

11 MR. MONAHAN: No, Your Honor. Thank you.

12 THE COURT: All right. An ongoing concern to me in
13 this case is avoiding sentencing disparities. With over
14 27 years on the bench, I have sentenced many defendants, and
15 Mr. Genco's guideline range has jumped out at me as being
16 particularly high. By applying the cross-reference to
17 murder, Mr. Genco's guideline range jumps significantly.
18 When I look at other similarly situated defendants who have
19 threatened serious violence motivated by hate or other
20 factors, their sentences have been lower, but their conduct
21 is equally, if not more so, dangerous or reprehensible. I
22 understand that Mr. Genco was prosecuted under the Hate
23 Crime Act and admitted to conduct including a threat to kill
24 women. I do not take this lightly. But when I look at
25 similar prosecutions involving threats of violence which

1 vary factually on the way they are charged, Mr. Genco's
2 sentencing range is disparate from those sentences.

3 In the case of *United States versus Michael Chan*, which
4 was Case No. 1:17-CR-108, which was my case, the defendant
5 was convicted of cyber stalking for repeatedly harassing a
6 female victim for years with threatening text messages and
7 packages. The harassment involved Mr. Chan anonymously
8 calling and texting the victim for several years, sending
9 deliveries and subscriptions to her home, and sending items
10 to a local news media stating that a subject was driving
11 from Canada to Cincinnati to sexually assault and murder the
12 victim. The victim received harassing and threatening
13 e-mails which she reported to authorities. The threat
14 escalated when Mr. Chan sent a text message to a local
15 detective working on the case indicating he was going to
16 visit the victim and there was nothing law enforcement could
17 do about it. He also indicated he was coming to Cincinnati
18 to attack the victim on the campus of the University of
19 Cincinnati. Mr. Chan was sentenced to 37 months
20 imprisonment.

21 In the case of *United States versus Izmir Koch*, which
22 was case 1:18-CR-34, which was also my case and actually a
23 trial that involved Ms. Gaffney-Painter, the defendant was
24 convicted of committing a hate crime for randomly attacking
25 a perceived Jewish person, fracturing his face and ribs,

1 threatening to slaughter, slice and kill Jewish people. The
2 defendant requested an innocence proffer through counsel
3 leading him to lie to federal officials resulting in a
4 prosecution for making a false statement to federal law
5 enforcement. The defendant was convicted of the charges at
6 trial and sentenced to 30 months of imprisonment.

7 In *United States versus Samuel Whitt*, which was Case
8 No. 1:17-CR-60 -- which was not my case, but Judge Michael
9 Barrett's, my colleague -- the defendant was convicted of
10 criminal interference with the right to fair housing.
11 Mr. Whitt admitted in his plea agreement that he used force
12 to intimidate and interfere with Victim A, an African
13 American male, and Victim B, a white female, because of
14 Victim A's race and the two victims' marital status and
15 because the victims rented and contracted and negotiated for
16 the rental of a home in Price Hill, Cincinnati, Ohio. He
17 did so, in part, by attempted arson. After his eviction by
18 Victims A and B, Mr. Whitt broke into the Price Hill
19 property and threw paint on the walls, stairs, and
20 appliances, poured Quikrete into the drains and toilet,
21 spray painted messages on the walls, including quote, die
22 Nigger, unquote; quote, slum lord, unquote; and swastikas,
23 among other things. He also attempted and threatened to
24 cause a fire inside the house. He was sentenced to
25 54 months of imprisonment.

1 Finally, and perhaps most troubling to me, is the
2 currently pending case of *United States versus Alex Jaques*.
3 It's spelled J-A-C-Q-U-E-S. It is Case No. 3:22-CR-143, and
4 it is currently pending before Judge Rice in Dayton. This
5 case is most factually similar to Mr. Genco's case but,
6 arguably, worse. This defendant is awaiting sentencing, and
7 the facts in this case are disturbing with the defendant
8 threatening violence on a mass scale against children and
9 being in possession of significantly more weapons than Mr.
10 Genco. The parties have entered into a Rule 11(c)(1)(A)
11 plea agreement in which Mr. Jacques pled guilty to
12 possession of a machine gun with a recommended advisory
13 sentence of 30 to 37 months.

14 In his statement of facts, Mr. Jacques admits operating
15 a YouTube channel entitled, quote, Guns and Film, unquote,
16 on which he posted a number of videos about firearms. On
17 September 30th, 2022, he posted a video entitled, quote,
18 Torture Testing a Chromebook, paren, Washington Middle
19 School, unquote. In the video, he shows a Google Chromebook
20 with a Washington Middle School sticker prominently
21 displayed on it lying on a bed in a bedroom with the camera
22 focused on the laptop. He says, quote: Hello, guys, we are
23 going to be torture testing a Washington Middle School
24 Chromebook, yea, Washington Middle School Chromebook from
25 Salinas, California, where I plan to eventually return and

1 fill out my list of duties that I have filled out with names
2 and addresses of people who have wronged me throughout the
3 years anyways, SUHSD, which stands for the name of the
4 school. That's Salinas Union High School District. He
5 stabs the laptop multiple times with a screwdriver. Two
6 separate firearms are visible in the bedroom. He picks up
7 the third firearm. He then picks up a power drill and uses
8 the drill on the laptop. He moves to the basement and the
9 camera shows a view of a table on which two firearms are
10 visible. He props the laptop up on a stand in the basement
11 and states: Yeah, okay, so Washington Middle School, you
12 are next, and fires a single shot at the laptop, which
13 appears -- with what appears to be a handgun. He then picks
14 up a 9-millimeter Luger Uzi-style submachine gun and fires
15 multiple shots in rapid succession at the laptop. He later
16 files a -- I'm sorry, fires a rifle several times at the
17 laptop. The school named hired armed security guards after
18 the administration learned of Mr. Jaques' video. Mr. Jaques
19 made other posts online, including a comment on line about
20 quote, doing his own Parkland, unquote. When law
21 enforcement searched his home, they found an arsenal of
22 weapons and devices, including a 9-millimeter Luger
23 Uzi-style submachine gun depicted in his video, several
24 other firearms, ammunition, suppressors, a grenade and
25 grenade fuses, large quantities of ammunition and gun

1 powder, along with other items.

2 Mr. Jaques faces a sentence of 30 to 37 months with the
3 possibility of the judge imposing a greater sentence. Of
4 course, he has not been sentenced yet, but this is quite a
5 difference from Mr. Genco's sentencing range.

6 Defendants in our district who threaten violence
7 against innocent victims, be it children or women, should be
8 treated similarly here in this district. In fashioning Mr.
9 Genco's sentence, I am striving to avoid these kinds of
10 unwarranted sentencing disparities. Mr. Genco's conduct is
11 very serious. These other defendants' conduct was very
12 serious too.

13 There are not a lot of defendants that are sentenced
14 under Sentencing Guideline Section 2H1.1 who fit the same
15 criminal history category and offense level as Mr. Genco. I
16 reviewed the United States Sentencing Commission's website,
17 which is called -- which goes by the acronym JCIN, which
18 stands for the Judiciary Sentencing Information Site --
19 which gives statistical information about federal defendants
20 and the sentences received within the last five years. I
21 know there was a criticism in the government's memo last
22 night about the Court limiting its comparisons to local
23 cases, so the Court went to JCIN, the United States
24 Sentencing Commission's website, to see what national
25 sentencings were.

1 When I enter 2H1.1, Criminal History Category I and
2 Offense Level 33, there's not enough data for the site to
3 provide statistics; that's how few comparators we have here.
4 However, looking around at similar criminal histories, I see
5 a trend of departures. For defendants with an offense level
6 of 32, which is only one point below the defendant in this
7 case, four defendants were sentenced between 2018 and 2022
8 and 100 percent of them received a downward departure or
9 variance with an average length of imprisonment of 71 months
10 and with a median length of 80 months of imprisonment.

11 For defendants with an offense level of 31, eight
12 defendants were sentenced between 2018 and 2022, and
13 44 percent received a downward departure with an average
14 sentence of 90 months' imprisonment and median sentence
15 length of 93 months of imprisonment.

16 The Court finds that a variance is warranted in this
17 case due to -- I'm sorry. I find that a variance is
18 warranted in this case to avoid unwarranted sentencing
19 disparities.

20 Let me ask counsel, do you have any questions about the
21 statutory provisions applicable to the imposition of
22 punishment in this case or the suggested sentencing
23 guidelines, Ms. Gaffney-Painter?

24 MS. GAFFNEY-PAINTER: Your Honor, I don't have an
25 objection to the summary of the statutory provisions that

1 apply here. But some of the Court's conclusions suggested
2 in its colloquy, the government would take issue with but
3 intends to address that in argument.

4 THE COURT: Thank you. Mr. Monahan?

5 MR. MONAHAN: No, Your Honor.

6 THE COURT: All right. Then, we'll now proceed to
7 the sentencing, and at this time, the Court will entertain
8 anything the parties wish to say in mitigation or
9 aggravation of sentence. Mr. Monahan.

10 MR. MONAHAN: Yes, Your Honor. With your
11 permission, it probably would be easier for me to be at the
12 podium.

13 THE COURT: Whatever you would like to do, Mr.
14 Monahan.

15 MR. MONAHAN: I'm going to let Mr. Genco remain
16 seated, if that's okay.

17 THE COURT: That's fine.

18 MR. MONAHAN: I might want to use the visualizer.
19 I can just slide it out? Okay. Thank you.

20 As I know you're aware, Mr. Genco has been subjected to
21 two prosecutions for his conduct. We're going to ask you to
22 seriously consider how the 3553 factors deal with this kind
23 of situation, and specifically two that I generally don't
24 talk about that much, and that is promoting respect for the
25 law, which is one of the primary considerations, and

1 providing just punishment. I know we talk a lot about
2 punishment, but this really seems to focus us in on the word
3 on what is "just punishment" under the statute.

4 We're going to submit to you today that the way this
5 second prosecution has happened is broken. It is an example
6 of how the system is broken when we have prosecutions by two
7 different jurisdictions for the same thing. And I want to
8 talk first about the state court proceedings, and I know
9 you're aware that that happened, but I think it's important
10 to actually really consider this as we look at the factor
11 promoting respect for the law.

12 As you know, Mr. Genco committed this offense. He was
13 arrested March 12, 2020, and that is the day he went into
14 custody. You've heard a lot about that. That happened up
15 in his county in Hillsboro. The local police arrested him
16 and he was taken into custody, and he was charged with
17 making a terroristic threat, and it relates to not just
18 relevant conduct, but the exact identical conduct that we
19 are still talking about today years later. He was charged
20 with making a terroristic threat. He was appointed counsel.
21 He was held in custody.

22 At the time of the charge, it was a felony of the third
23 degree in Ohio and that case proceeded. They got discovery.
24 They obtained his phones, his electronic devices; they did
25 forensics on them. They built a case. The defense attorney

1 had him psychologically evaluated during the course of that
2 case. I think the Court has now seen and referred to that
3 state psych eval, and, ultimately, that case ended in a plea
4 agreement. It took six months to get to sentencing. So
5 between March when he was arrested of 2020 and September of
6 2020, that state case reached a conclusion. That's a decent
7 amount of time for a state case, it took six months to get a
8 resolution.

9 He pled guilty pursuant to a plea agreement in that
10 case to attempted making a terroristic threat as a felony of
11 the fourth degree. As I think we all know, that carries up
12 to 18 months in state court, between 0 and 18 months. The
13 judge on that case, Judge Coss -- who by the way was a trial
14 judge who had been on the bench for over a decade at this
15 point.

16 THE COURT: A child.

17 MR. MONAHAN: Pardon?

18 THE COURT: He's a child compared to me.

19 MR. MONAHAN: Relatively speaking, but still no
20 inexperienced judge. He took a look at the case. He had
21 all of the evidence before him. He heard from both sides.
22 He had a psych report. It was a fair six-month process, and
23 the judge gave him not even the maximum sentence that he had
24 available. The maximum sentence would have been 18 months;
25 that Judge gave him 17 months.

1 So in September of 2020, my client is sentenced after a
2 fair state proceeding in which he pled guilty. That should
3 have been the end of this matter. There's never been a
4 single question or allegation there was anything unfair
5 about that proceeding, that sufficient information wasn't
6 provided during that proceeding, and I think societally, we
7 expect that to be a final judgment.

8 And when we start thinking about promoting respect for
9 the law, isn't this one of the things that that means? You
10 get charged, you get counsel, you engage in negotiations and
11 discussions about discovery, you reach a resolution, and it
12 is done. And you know that when you are sentenced, you will
13 do the time you are required to do, you will do your
14 rehabilitation, and you will come back into the community a
15 better citizen for it, hopefully. But that is not what
16 happened in this case.

17 Mr. Genco goes off to prison to do his sentence, state
18 prison now, and keep in mind this is COVID era. And I point
19 out in our sentencing memo, this was no easy jail sentence
20 for him. He's on lockdown. You may recall this is the
21 height of COVID problems in jails. He does his time with
22 the State of Ohio, and he is released February 23rd, 2021,
23 released from prison. He goes to stay at the Alvis halfway
24 house. He is assigned a case manager who he is working
25 with.

1 He gets employment. And this is all in our sentencing
2 memorandum. He starts at the Tumbleweed restaurant. He is
3 a server, a busser, not what he envisioned being his
4 life-long career, but it is work he got coming right out of
5 prison. He worked there for a couple of months and then got
6 himself a better job at Candle-lite in Williamsburg, Ohio,
7 making candles. He enjoyed it. It was good work. He was
8 making \$18 an hour at that point. He continued working at
9 Candle-lite through the summer until July of 2021. At this
10 point, he has been out for five months after serving his
11 sentence, living in a halfway house, rehabilitating,
12 working, seeing a case manager, being a productive citizen.

13 There has not been a single suggestion in the PSI, from
14 the government, any police report anywhere that during this
15 time he had finished his sentence, he was having bad
16 behavior, bad thoughts, bad writings, nothing. He's just
17 productive. He's done his time. He's learned his lesson,
18 and he's on track. This is promoting respect for the law.
19 He's out. This is providing just punishment. He's doing
20 what he's supposed to be doing.

21 But what happens instead? Instead, in July of 2021,
22 five months after my client was released from prison, the
23 Feds charge him with this case and an indictment. He is
24 arrested the very next day, goes into custody on July 21st
25 of 2021. He is arrested at the Alvis House where he is

1 living. The government is now seeking a sentence that is
2 nine times longer than what he received for the exact same
3 conduct in state court. How can this conceivably under any
4 broken sense of justice promote respect for law?

5 I wanted to ask why did this happen, but really the
6 better question is: How does this promote respect for the
7 law? How under any ill-conceived sense of justice does this
8 promote respect for law? How is this just in a system that
9 is supposed to be the world's best in delving out justice
10 and punishment to defendants? It is simply not fair, Judge.
11 It is not a fair way of proceeding in criminal prosecutions.

12 Now, I understand, and I'm sure the government can
13 point out, the Supreme Court has held the double jeopardy
14 clause does not prohibit them from doing this, we know this,
15 but it also doesn't encourage them to do this. I mean, does
16 the constitution encourage them to second guess state
17 prosecutions; is that the point of federal prosecutions,
18 second-guessing what's already been done in a fair
19 even-handed state criminal prosecution? We submit it is
20 not, it is not what the government should be doing with its
21 time.

22 So as you consider promoting respect for the law, we
23 simply ask that you consider these factors. On top of the
24 state sentence, Mr. Genco has now sat in custody for another
25 two-and-a-half -- just over two-and-a-half years. He went

1 into custody July of 2021 and here we are February 29th,
2 2024. So in addition to the state sentence he had already
3 served, he has now served another two years, I think, and
4 seven months, is where we are.

5 It appears the government's position is the state got
6 it wrong and we need to fix it, but that certainly is not
7 how the justice system is supposed to work. So as we look
8 forward and I submit to you -- and I think the Court may
9 have some feelings about this already -- but this offense
10 Level 33 for this offense shows how these guidelines are
11 broken for this crime, especially when you consider what
12 these other defendants have received for similar and I think
13 often more egregious conduct. It's broken. This is a
14 broken guideline system, that this is where Mr. Genco ends
15 up.

16 And as I'm looking at these other sentences that you
17 mentioned -- and I explained this in the sentencing memo --
18 it seems to me that there's a spectrum of offenses. There
19 are people who have actually committed a violent offense and
20 then there are those who have threatened or attempted to
21 commit an offense, and certainly that's two different groups
22 of people, and that's a spectrum. You know, I'm a guy who
23 thought about it, I'm a guy who planned it, I'm a guy who
24 attempted to do it; and I'm a guy who did it. Okay. This
25 is a spectrum of conduct.

1 My guy has pled guilty, and nothing I said today will
2 take away from the fact that this man, from day one, all he
3 has wanted to do is plead guilty to this crime. And we get
4 caught up legally what is an attempt and what is not an
5 attempt and this has been from an attorney perspective a
6 tricky case to put one's thumb on; but, nonetheless, he has
7 always wanted to accept his responsibility, and that's what
8 he has done and that's what he is doing fully today,
9 accepting responsibility for where he was.

10 But I want to say this, when we look at these other
11 cases that you mentioned and the Court already summarized,
12 I'm going to hit a couple high points. I was going to do a
13 more thorough summary, but you really hit what I was going
14 to say. If we look at two defendants which you mentioned,
15 first the Koch, K-O-C-H, case, which you had, here's a
16 defendant that committed a violent offense, this is a person
17 that actually did it. And I was actually reading the
18 government's sentencing memorandum in that case that he
19 comes out of a restaurant and is yelling how he hates Jewish
20 people and wants to slaughter them, those are his words. He
21 demands to know who present is a Jewish person, and he
22 encounters who you know is the victim -- I know you heard
23 that trial -- punches him twice in the back of head. The
24 guy falls to the ground. The defendant and his friends
25 continue to assault, kick, and punch this victim laying in

1 the parking lot. His fiancée attempts to intervene. The
2 men who are beating her husband threw her to ground like a
3 rag doll, is what the government wrote, while she screamed.
4 It was only a friend of the victim who was able to intervene
5 and stop that defendant from beating this man, who knows how
6 badly, I mean, it was stopped, but what if the friend hadn't
7 intervened, he might have beat the guy to death, for all we
8 know. Does it get more serious than that? He wasn't done,
9 though, with the beating, because then he proceeded to run
10 around the parking lot screaming: If I had a knife, I would
11 cut a Jew. So, you know, here we have a guy that went all
12 the way and beat someone, perhaps what would have been
13 significantly worse if not stopped, and as you pointed out,
14 that guy got 30 months, 30 months in jail. My client has
15 already served more than 30 months in jail.

16 One case we didn't mention because I know it wasn't in
17 my sentencing memorandum, but Mr. Johnson, who pled guilty
18 before you yesterday, I know you're very familiar with it,
19 I'm just going to mention it. Mr. Johnson beat an Asian
20 person at University of Cincinnati, a student who was simply
21 walking down the street. He beat him yelling out racial
22 slurs. He also was pulled off of that victim by other
23 students in the area. We don't know how bad that would have
24 gotten had they not done that. Mr. Johnson has an agreed
25 sentence of not more than 22 months.

1 So those are two cases where actual violence was
2 committed, which again is not Mr. Genco. We have Mr. Whitt,
3 which you mentioned, I think Mr. Whitt is an interesting
4 case, and he's a defendant who put racial slurs all over the
5 African American man's apartment home. This defendant --
6 and I think you pointed out all of the facts -- I wanted to
7 remind you is more than just an attempt at arson. This
8 defendant went in, put the gas on the stove, lit a candle
9 next to it and ripped out the smoke alarm. I think it
10 sounds like it was just happenstance that that didn't kill
11 people. It certainly sounds like it was the intention, that
12 in addition to the knife that the defendant stuck in the
13 floor of that apartment.

14 And that was a civil rights violation case by force and
15 threat of force, attempted to, and did, willfully injure,
16 intimidate, and interfere with Victim A and Victim B. That
17 was what the charge said. He pled guilty to the civil
18 rights violation, got 54 months in prison, \$66,000 in
19 restitution that defendant caused. And I think you pointed
20 out all of the other inflammatory stuff about him, although,
21 I would point out he also had a prior conviction for racial
22 intimidation, painting swastikas and things on churches and
23 schools.

24 So again, when we're comparing these cases -- and I
25 know the government has attempted to minimize the

1 seriousness of them, they certainly didn't at the time that
2 they were prosecuting these people, and that's some of what
3 we're pointing out today and in our memorandum. At the
4 time, these were Public Enemy No. 1. Mr. Whitt got the
5 longest sentence of anyone at 54 months, which I think
6 you've already pointed out.

7 The threat cases, Mr. Chan, I know you handled that
8 case, that was 37 months, and you did a very thorough job of
9 summarizing everything he did. I would remind you he also
10 threatened shootings at UC and bombing at the university, so
11 it wasn't just threatening that woman. He threatened
12 broader attacks. He also harassed the police at one point,
13 even ordering pizza to the police department because he just
14 continued to taunt them that they could never catch him over
15 the course of six years. 37 months.

16 Mr. Jacques I think you've covered very thoroughly.
17 And I submitted a memorandum last night detailing the
18 government's sentencing memorandum in that case, which is
19 actually hard to read because there's so much violence and
20 there's actually sex offense allegations against I believe
21 his sister and it goes on and on. So as you pointed out,
22 the government agreed to a guideline range in that case of
23 30 to 37 months. I submitted you the entire sentencing
24 memorandum the government submitted in that case. There was
25 no request for an upward departure or variance.

1 Finally, the last case I want to mention is the
2 *Ferguson* case. This was a Sixth Circuit decision on
3 attempted kidnapping. And I did spend a good deal of time
4 talking about this case related to Mr. Genco's case in our
5 sentencing memorandum, so I won't rehash everything we've
6 said in that case. But in *Ferguson*, the defendant in that
7 case, I would submit to you, was really further down the
8 line toward committing a crime than Mr. Genco. That
9 defendant went to trial. And this -- just for the record, I
10 know I've cited it, it's *United States versus Ferguson*, 65
11 Fed 4th 806, a published decision from the Sixth Circuit,
12 April 20th, 2023.

13 Mr. Ferguson was planning a kidnapping. He had a
14 firearm, an AR-15 rifle. He had created an online group,
15 you know, those state militia people who are very violent.
16 They had created a name for themselves. They had created an
17 online group. His plan was to lure law enforcement
18 officials to a remote location under a ruse of having a
19 female pretend to be in a domestic violence situation,
20 kidnap them, strip them, take their weapons for their own
21 use and send them on their way as kind of a calling card to
22 law enforcement as to how bad these people were. This is a
23 plan in the kidnapping. They got as far as actually going
24 out to a remote house and doing a practice call to see how
25 quickly law enforcement would show up for their future

1 planning of this offense. That defendant -- however, there
2 was an undercover FBI agent working in his group of people
3 and they arrested him that day and charged him with
4 attempted kidnapping. So the importance of all of this is
5 look how far down the line this guy got, he actually phoned
6 law enforcement to test how quickly they would come to a
7 location for the kidnapping.

8 Importantly, the Sixth Circuit holds in a published
9 decision -- and this is after our proceedings were
10 already -- we've already pled and already awaiting
11 sentencing. They hold that that was not even an attempt
12 under federal law, not even an attempt. And they focus on a
13 couple of things I want to just read you directly from the
14 Sixth Circuit decision. Preliminary or planning activities
15 are not -- and this is this case at page 812 in the
16 decision. The Sixth Circuit, preliminary or planning
17 activities are not sufficient to constitute an attempt. A
18 fragment of the crime must essentially be in progress. The
19 purpose of the substantial step requirement is to ensure
20 against the danger of convicting for mere thoughts, desires
21 or motives.

22 The Sixth Circuit says: Ferguson's plan was to conduct
23 this raid on a law enforcement officer more than a month in
24 the future. The government pointed us to no Sixth Circuit
25 case in which an attempt conviction was predicated on a plan

1 as far in the future as *Ferguson* here. I struggle to find
2 out that's different than our case, I really do.

3 Now, my client pled guilty and is admitting guilty to
4 committing an attempt. But when you consider the degrees of
5 seriousness of crimes -- this is what I'm wanting you to
6 look at -- is we have again people with plans, people who
7 attempt, people who commit violent crimes. Where is he on
8 the spectrum, how far along the line is he? The Sixth
9 Circuit says: The possibility of committing this crime more
10 than a month in the future. The government has not shown us
11 a single case where that constitutes an attempt. We know
12 what attempts are. I've got a gun, I'm on my way to the
13 bank, the police arrest me before I get there. I'm in the
14 park, I'm going to snatch a woman's purse, and I get
15 thwarted before I run away from them. These are what we
16 understand as attempts under the law.

17 I think *Ferguson* really helps us focus on how serious
18 of an attempt was Mr. Genco's conduct. Now, it was serious
19 and he is having some dark thoughts, and certainly he did a
20 lot of writings that were very dark and violent and serious.
21 However, one of the things the Sixth Circuit noted in
22 *Ferguson* -- and this is the last thing I want to point
23 out -- the defendant in that case, the government admitted
24 it did not know when *Ferguson* acquired his gear, and the
25 record demonstrates unequivocally that he had, at minimum,

1 owned his AR rifle prior to espousing his idea on
2 April 28th. So the Sixth Circuit is focussing on the fact
3 that he didn't buy the gun as part of the plan, he already
4 had a gun. That is exactly what we have here.

5 Okay. If you go back to the government's filing,
6 sentencing memorandum, it indicated that he obtained all of
7 his gear January and February or in May, and his first
8 insult post is July. Okay. So again, this is not
9 purchasing a gun in relation to sub beliefs. It's guns that
10 he already had and then he gets into these sub beliefs --
11 and they indicate in the filings and indictments -- in July
12 of 2019, that's how far back this was.

13 So in considering *Ferguson* in total, which we think is
14 a very important comparison, we ask the Court to keep that
15 in mind in deciding just how far down the line and how
16 serious this conduct was in relation to being an attempt.

17 Okay. All right. There's one other point I want to
18 touch on related to -- and to be clear, the government
19 indicated my client bought the tactile gloves, bulletproof
20 vest, hoodie, cargo pants, Bowie knife, and skull face mask
21 in January of 2019; the armory, the long rifle gun in
22 February; and the rest of the gear, Glock, magazines, clip,
23 holster, in May. And then his first insult communication is
24 in July.

25 I want to mention one other point about the seriousness

1 of the conduct and that is the surveillance. The government
2 indicated in the indictment that my client conducted
3 surveillance at an Ohio university on January 15th, and this
4 is something they've kind of pointed to as to why this was
5 an attempt and why this is escalating. Specifically, the
6 government wrote on -- this is their government response in
7 opposition to our motion to dismiss, which was Document
8 No. 35. They wrote: Genco also conducted surveillance in
9 the location of a university in Ohio. IP records from his
10 e-mail account show him logging into an IP address on the
11 same day that he drafted a note that appears to detail his
12 surveillance of a school. An FBI tool showed the IP address
13 came back to Alliance Ohio, and I know you heard this in
14 pretrial filings. They believe or they've indicated in
15 writing in a filing that my client was surveilling a
16 university in Alliance, Ohio. The government further wrote:
17 A location over three hours away from his home in Hamilton
18 County, Ohio, where he was later arrested and his weaponry
19 and to-do list were discovered.

20 I'm going to tell you we don't believe there's any
21 evidence to support that that happened, that he went to
22 Alliance, Ohio, that he conducted surveillance at that
23 Mountain Union university. We challenge the government to
24 show you evidence that that's what my client did, that he
25 went to Alliance, Ohio and surveyed Mount Union university.

1 And we ask you, failing that, the standard is preponderance
2 of the evidence, which we've not seen it. We don't believe
3 that you should be considering the surveillance at Mount
4 Union university.

5 All right. Final thing I want to talk about this
6 morning --

7 THE COURT: Take your time, Mr. Monahan.

8 MR. MONAHAN: Yes, thank you. -- is my client, you
9 know -- and I know I've saved this to the end, but it
10 probably is some of the most important part of what you've
11 got to consider and think about in deciding how big of a
12 variance he deserves. And I want to talk about his history
13 and I want to talk about his rehabilitation, and I want to
14 mention the psychological evaluation that the Court has
15 already referenced.

16 As you know, Mr. Genco had, I think it's fair to say, a
17 strange childhood. As you know from the psychologist and
18 from the state psych report, he definitely had a severe
19 mental illness. The latest doctor has termed that bipolar
20 disorder, which is one of the big four of the serious mental
21 health problems. He grows up with a mother who by her own
22 admission in her letter had mental health problems. I think
23 she's opined to you that she believes her mental illness,
24 her father of Mr. Genco leaving their lives, and her being
25 left to raise him by herself, that that did not go very

1 smoothly. His mother described herself as autistic,
2 agoraphobic, and suffers from severe PTSD due to horrific
3 abuse and homelessness that she suffered as a child. She
4 collects Social Security Disability for her disabilities.

5 She raised him and she indicated -- and I think the PSI
6 supports -- that he was severely bullied as a child in
7 school, and the mother takes him out of school and
8 homeschools, which can work for some parents and kids, but
9 it does not sound like this was an ideal situation. What he
10 actually ended up facing was complete social isolation
11 during his formative years. He is severely stunted in his
12 social skills. He had odd things they did, like having a
13 goat rescue farm, which my client enjoyed doing as a child,
14 but that was his, you know, contact with his mother and with
15 goats that they're raising on the farm. His mother
16 indicated he was always kind to the animals. He enjoyed
17 caring for them.

18 The one kind of work it appears his mother was able to
19 do was she had kind of a cleaning company that she ran
20 herself, and she was working on military installations just
21 doing cleaning. That's indicated in her letter, and I
22 talked about this in the memo. And my client would go with
23 her as a young person there when she was doing the cleaning
24 and as a result got to interact with some of the military
25 personnel, which actually was something that he developed a

1 dream early of possibly being a military person when he was
2 a young person and something he wanted to do when he got
3 older. So these things are put into his head at this age.

4 Finally graduates homeschool and this is all out in
5 California. He does a year of online college at Shasta
6 College in California. Again, no social interaction when
7 you're having online school. When he was 18, his maternal
8 grandmother passed away, and he and his mom receive an
9 inheritance, and that's what brings them to Ohio.

10 His mother makes the decision to move here to
11 Hillsboro, Ohio in 2018. They have no family here. They
12 know nothing of this community. But his mother wanted to
13 get away from California, find a lower cost of living, find
14 a safer place to live than California, and they move to
15 Hillsboro, Ohio. So Tres, already who suffered from severe
16 isolation, comes somewhere where he knows no one at age 18
17 and just has again his mother.

18 He had a very difficult time adjusting to the move. As
19 I mentioned, he has no friends here. It just further
20 fosters his isolation and social awkwardness. So in 2019,
21 this is when he turns 19 years old, so -- and I want to
22 remind you, and I should be repeatedly reminding you of
23 this, this stuff, this incel sub belief and guns and all of
24 this stuff, he is a 19-year-old boy at this point, 19 years
25 old. We are now, what, four years later in 2024, he's a

1 very different person sitting before you than a 19-year old
2 kid who came from that background of complete social
3 isolation.

4 You know, and this is a problem with this generation to
5 start, living their lives online, you know, phones and
6 computers, and then you take someone who has been completely
7 socially isolated and taken out of school and that's his
8 existence, is online. So when you see these troubling posts
9 and internet searches, and, I mean, yes, they're -- for us
10 to look at this from the outside, it's certainly concerning,
11 but, you know, you take a human being's thoughts 24/7 and
12 the things they think about and the things they write down,
13 especially when they think they're in this harmless world of
14 the internet, I think it's just a perspective that we have
15 to have.

16 You know, the government is pointing to the three
17 things he wrote, the one-page note he wrote in Greece and
18 then this document he writes about "your helpful friend and
19 murderer." You know, this is stuff he's writing. He's not
20 sending it to anyone. He's not threatening anyone with it.
21 These are things he wrote one day in Greece. He's drunk
22 most of the trip, we've learned that now. So it's hard to
23 judge someone's entire existence and their entire what they
24 planned to do based on a couple of isolated things they
25 wrote over a long period of time, especially when this whole

1 anonymous internet is his existence. You know, that's where
2 he lived his life, and he said, you know, he's expressing
3 these dark views, just getting them out. He's not fond of
4 the fact that he's having them, but this is where he was and
5 that's why he's pled guilty. This is why he pled guilty in
6 state court and why he wanted to plead guilty here. He's
7 admitting his part. It's just how much punishment does one
8 deserve for this?

9 So we're here in Ohio, he's now turned 19 years old,
10 he's having these dark thoughts. We know that his
11 grandmother passed away. He's able to take some of that
12 inheritance money and he takes this fated trip to Greece.
13 It's the first time he's really been away from his mother in
14 his life. Greece has an 18-year-old drinking age at that
15 time and he gets there and, oh, boy, he lays into the
16 alcohol heavy. He writes the one-page note that we later
17 find -- the police later find at his house buried in a tub.
18 It's one page and it's the rambling thoughts he wrote down
19 while in Greece, which got retained and was found by his
20 mother later and then found by the police.

21 After he gets back from this trip, he's joining the
22 military, and I mention this was an idea planted in his head
23 at a young age, you know, that he thought he would join the
24 military. And he goes in and he actually -- contrary to
25 what the government is suggesting -- hoped that the military

1 would kind of straighten him out, get him off of some of
2 these dark thoughts, get him into something that's a team
3 and something that he can believe in and learn from, and it
4 was the absolute opposite experience. He's just like he was
5 at school, he's bullied. He gets deathly ill with pneumonia
6 which causes him not to be able to keep up, and it's just a
7 traumatic event for him. And he also realizes I don't want
8 to be carrying a gun around and shooting people in the
9 military, that was not something that appealed to him when
10 the thought of carrying a gun and shooting people hit him.
11 That's not to say that he still doesn't have dark thoughts,
12 but this was an experience that really kind of opened his
13 eyes, and he gets out of the military. And we know now that
14 he has got undiagnosed bipolar disorder through all of this.
15 And he tries things like St. John's Wort, which was in the
16 file, and that actually may have been exacerbating his state
17 and contributing to his racing thoughts.

18 And during this time -- and I'm not going to hash all
19 of these out. I attached them to the sentencing memorandum.
20 I know the government is going to show you some searches he
21 did. But I also showed you some posts that he did where
22 he's having reservations about the incel movement. Those
23 are attached as exhibits to our memorandum. Back in August,
24 he wrote in a message team with a friend complaining about
25 how incels were prone to violence, he no longer wanted to be

1 involved with incels.

2 When we get around to January and he's back out of the
3 military, he's writing a friend that he deleted his Discord
4 app because he's developed as an individual and no longer in
5 incel, that was January of 2020, two months before his
6 arrest. He's writing to a professor in Georgia who's doing
7 an article on incels identifying that Mr. Genco used to be
8 an incel, and he has developed, is no longer an incel.

9 So these are intermixed with some of the things the
10 government is pointing you to as to what he's doing. So I'm
11 not saying he didn't have dark thoughts and I'm not saying
12 he continued -- didn't continue to have dark thoughts, but
13 it's not always clear. This is not a person who knows what
14 he's doing and is focused on what he's doing. This is a
15 person who's all over the place on what he should be doing
16 and what he should be believing, and he clearly needs help,
17 and he tries to get help.

18 You can see in the presentence report he goes to his
19 doctor, which is Adena healthcare. They put him on a couple
20 of different medications to try to help him. But he's
21 seeing a family practice doctor in a small town who I'm
22 estimating was not putting his thumb on the depth of Mr.
23 Genco's psychological problems, but he did try to get help.

24 Then, we come around to March and he's having arguments
25 with his mother and he's playing these violent video games

1 in his room, and he has these firearms that we know he
2 acquired a year before. And the police show up and it's
3 kind of a domestic incident, and he gets arrested. And this
4 is where the police discover this one-page letter that he
5 wrote in Greece in August of 2019. What is that, seven
6 months earlier, eight months earlier at that point. And, of
7 course, now this letter is a big deal because it does --
8 reading it, I'm not going to say it doesn't -- it sounds
9 like someone who's having this these kind of dark thoughts
10 about a shooting, but he wrote it eight months ago, and now
11 it's fresh to them because they just found it. So he is
12 then arrested, and I think you now know the back end of the
13 story. We know that he stays in custody and everything that
14 happens to him in the state court proceedings.

15 So we look at Mr. Genco as a whole person when we get
16 around to sentencing and not only what did he do, but where
17 is he now, what has happened with him since then. He
18 started his rehabilitation in state prison. He was out for
19 five months, I've already talked fairly extensively about
20 that, and then he goes back into federal custody and has now
21 sat there for two-and-a-half years.

22 You know that, you know, he's at the Butler County jail
23 this whole time. There's only so much one can do at the
24 Butler County jail to try to better themselves. That's an
25 unfortunate part of, you know, this existence, but he's two

1 years and seven months at Butler County now. I think if you
2 look at, you know, this veterans program he's been involved
3 in -- you notice every time he shows up, he's in a khaki
4 shirt and pants, which is not inmate garb. He's in this
5 MANA program which gives him a lot of freedom moving around
6 the jail. He is a porter and does a lot around the jail,
7 laundry and those types of things. He's in this MANA
8 program. I sent a letter to you from the gentleman who runs
9 that program, sterling report of my client. It's hard -- I
10 wish we could have had him in treatment the last
11 two-and-a-half years, but that's not an option at the Butler
12 County jail.

13 But what we suggest you should see is this -- and
14 really it's interesting to compare him to that defendant in
15 Jacques. I submitted to you the series of letters and
16 communications that Jaques did out of that Butler County
17 jail, it's in the memo I filed late last night, letter after
18 letter threatening people and continuing his interest in
19 guns. I mean, there's an evidence situation, perhaps,
20 that's very different than my client in terms of what is his
21 focus since he's been locked up. This is a different person
22 than he was in March of 2020 when he was arrested, which at
23 this point is, if I'm counting, that's almost four years
24 ago. I challenge the government or the Court to find a
25 single complaint about him since he was arrested in March of

1 2020, one bad incident of conduct, one bad thought, one bad
2 thing he wrote, one bad thing he said to another person,
3 anything that demonstrates he's still harboring these
4 beliefs.

5 In fact, look at the letters, and I know we submitted
6 to you a bunch of letters from inmates -- and the government
7 might say inmates, what do you expect -- but these people,
8 do you see this very much? People say how nice he is, how
9 caring he is, how he's helping look after those that come
10 into the jail.

11 I want to point out I've got a mother and father here
12 in the second row, and I don't want to single them out too
13 much, but they're here because their son was locked up with
14 my client and I submitted letters to you earlier this
15 week -- I won't say their names in public, I don't think we
16 need to -- but you got their letters and now they're here
17 because they were so compelled by how my client helped their
18 son while he was locked up at that jail. I mean, who does
19 this, who is this compelled by the kindness of an inmate to
20 travel all the way to Cincinnati for this sentencing because
21 they support him and what he did for their son while his son
22 was -- while their son was at the jail?

23 I mean, that's just one tidbit of who is this person at
24 his core and what is he becoming and why we can feel
25 confident he is never ever going to do this again, and that

1 he has learned his lesson. He learned his lesson when he
2 was prosecuted the first time, and you can darn well bet
3 that he learned it when he is prosecuted for the same thing
4 the second time. He is done with the beliefs.

5 The psychologist sees it. And I know, you know, as
6 with everything else in the case, the government takes issue
7 with the psychologist as well and says he doesn't know what
8 he's doing and he didn't do the right testing, how could he
9 possibly know this guy from meeting him one time. I would
10 inform them that most psychologists go meet the defendant at
11 the jail one time and they do a report and they interview
12 family and this is how the process works. You know, we have
13 the state psychological evaluation which said he has a
14 severe mental illness.

15 We then have the doctor that -- actually, the Court
16 wanted another psychological evaluation; we got that done.
17 This doctor, he's an attorney and a psychologist, he comes
18 in and gives a very long, detailed, fair assessment of my
19 client. And this is while, you know, right here at the end
20 of the process after he's been at the Butler County jail all
21 this time, and he got the evidence, he got the indictment,
22 he got the PSI. He's able to see everything the government
23 is seeing in this defendant, and this is what he says, he
24 says, yeah, these were bad things and, yeah, he's got a
25 severe mental illness, and this is, you know, maybe a bad

1 concoction. But looking at this Defendant and where he is
2 at this point in his life, he is, what, a low risk of future
3 harm if, as you pointed out, he'll deal with his mental
4 health and he'll deal with his what I think is an alcohol
5 problem.

6 That's compelling, right? I mean, that's compelling
7 information. If our goal -- you know, and we understand the
8 Court's concern, if I cut Mr. Genco a break, is he going to
9 turn around and be right back in the same spot. You know
10 what, I don't know how much better evidence you could have
11 that he's not. I don't know how much better evidence you
12 can have that he is not.

13 I think the bottom line at the end of this case is
14 really we're sitting here in the middle of an unnecessary
15 prosecution. He's already duly prosecuted for this same
16 crime. He got a sentence that was frankly in line with the
17 defendants that we've had got. He got 17 months, that's not
18 out of line with what defendants are getting. But, go
19 ahead, fine, add now he's sat in the Butler County jail for
20 two-and-a-half years. He's already in the range of the
21 highest sentence we could find for an offense of this ilk.

22 Now, I know it's a big stretch to ask for time served,
23 and I get it, and I hear the Court saying we want you to do
24 some more time. And we want you to consider this. We
25 really appreciate the Court for looking at some of the

1 national statistics which are not out of line with where we
2 are today and certainly the local statistics support. We
3 think the psych report supports that. We think his behavior
4 over the last two-and-a-half years support that. We think
5 the letters he received, the sentence he got in state court,
6 every single thing lines up to say this is enough.

7 And the government wants to complain about the cases
8 we've given you and complain about the psych report. Well,
9 they've not cited you any other cases to look at, okay? And
10 he's been sitting in custody for two-and-a-half years. If
11 they have a problem with the psych report, they can ask for
12 one to be done at the BOP, which they've not done one time
13 in two-and-a-half years. Okay. So it's easy to sit back
14 and arm chair quarterback, oh, this is wrong, that's wrong,
15 we don't agree with that. You know what, take the steps to
16 get the information you think the Court needs, because they
17 haven't done it.

18 So in sum, Your Honor, we ask you to consider a
19 sentence of time served in this case. Enough is enough.
20 Failing that, failing that, if the Court deems that not
21 appropriate, certainly, we've given you plenty of
22 information of similar defendants in similar cases to
23 fashion an appropriate sentence. With all of that in mind,
24 we ask the Court, as you've indicated, to downward vary to a
25 sentence of time served or whatever sentence the Court deems

1 appropriate. Thank you.

2 THE COURT: Thank you very much, Mr. Monahan.

3 Ms. Gaffney-Painter.

4 MS. GAFFNEY-PAINTER: Thank you, Your Honor. May I
5 approach the podium?

6 THE COURT: Sure, please do.

7 MS. GAFFNEY-PAINTER: And, Mr. Miller, I would like
8 to use the overhead projector, please.

9 THE DEPUTY: Okay.

10 THE COURT: Let me take this minute to thank the
11 couple who are here who came to support the Defendant.
12 That's extremely nice of you and it says a lot to the Court.

13 MS. GAFFNEY-PAINTER: May I proceed?

14 THE COURT: Yes.

15 MS. GAFFNEY-PAINTER: Your Honor, earlier in this
16 proceeding, you gave a summary of all of the documents that
17 have been filed in advance of this sentencing. Even as of
18 midnight last night, the second supplemental sentencing
19 memorandum was filed in this case. And I don't wish to
20 belabor those documents, because I know the Court has read
21 them and considered them thoughtfully, but some of the
22 arguments made by defense counsel both here and in those
23 submissions I would like to respond to.

24 First, let's talk about the *Jacques* case out of Dayton.
25 Now, we highlighted in our submission to you how that case

1 is distinguishable from the case we have here. And in his
2 response, defense counsel asserted certain things about that
3 case that are just simply not correct. So, first, in the
4 government's sentencing submission, page 2 and page 20, the
5 prosecutors there are advocating for a significant sentence
6 of imprisonment, and having spoken to those prosecutors,
7 they fully intend to seek an upward variance in that case.
8 They are not bound to make a specific request in their
9 sentencing memorandum. He asserted that under the law they
10 would be required to do that, that's simply not true, and
11 they have been advocating for a significant sentence in that
12 case.

13 And some of the relevant conduct that is referenced in
14 the government's submission and was argued here by defense
15 counsel I think would come as a surprise to Mr. Jaques'
16 defense counsel, who is also a federal public defender.
17 They are contesting vehemently a lot of that relevant
18 conduct, including the accusation of sexual assault in the
19 family and the accusation that there was a list. The
20 government never found a list. There was no list found in
21 the search warrant for that case. Mr. Jaques on his YouTube
22 channel said I have a list of people that I want to, you
23 know, get back at, but that list has never been located.
24 And, in fact, defense counsel, the federal public defender's
25 office, is saying there was no list, it was merely a joke.

1 In that case, they had threats, very dire, scary
2 threats, a lot of very scary weapons, but what they did not
3 have was a plot. They did not have a plan. They had
4 someone shooting a laptop with a middle school sticker on it
5 saying that he was going to -- you know, wanted to target
6 that middle school. But that middle school is located in
7 California and the defendant is in Dayton, Ohio, and they
8 found no evidence that the defendant was planning a trip to
9 California, that he had taken any substantial step towards
10 completing what he was talking about on the YouTube channel.
11 Instead, he was making threats and engaging in a lot of
12 scary behavior, but they didn't have an attempt. If they
13 had an attempt, if they had the substantial step, they could
14 have charged it, they would have done something different.
15 What they could charge was possession of a machine gun and
16 so that's what they charged here.

17 THE COURT: Somebody must have taken his threats
18 seriously, because the school board hired private help to
19 protect the school, so I think somebody believed his threat.

20 MS. GAFFNEY-PAINTER: Oh, absolutely, and that was
21 a prudent decision on behalf of the school, to take this
22 YouTube video seriously, but what the school views as its
23 personal responsibility to the security of its students is
24 very different as to whether you can make out the elements
25 of an attempted murder charge here. There was absolutely no

1 plan as far as they were aware, that there was no list,
2 there was no planned day. Now, compare that to this case
3 where there is a written plan, a written to-do list that the
4 defendant prepared with a date certain, with a target, with
5 an outline for what he intended to do in the future.

6 Your Honor, this here is Government Exhibit D to our
7 sentencing memorandum. So let's take a look at this.
8 Defense counsel wrote in the sentencing submission and
9 argued here today that these are just, you know, the drunken
10 ramblings of Mr. Genco when he's traveling to Greece. But
11 that Greek trip -- he brought this letter home with him, he
12 kept it in his room, and even after his mother found it and
13 confronted him with it, he still kept it. And why? Because
14 he was working his way through this list.

15 Now, there was a lot of reference in the argument and
16 in the sentencing submission to the state charges in this
17 case. And I want to be clear, the defense counsel said, you
18 know, it's duplicitous and that he was fully, completely,
19 and fairly prosecuted by the state. Again, I think that
20 would come as a surprise to Mr. Genco's state defense
21 attorney who filed a motion to dismiss because he said that
22 writing a private note in your bedroom is not a threat. A
23 threat has to be communicated. It can't be a terroristic
24 threat if it's just a document.

25 And after he lost that motion to dismiss, Mr. Genco

1 entered an *Alford* plea. I thought that the defense attorney
2 would consider that a fair prosecution. And in the state,
3 this is what they had, this is what they had. They didn't
4 have the breadth of evidence that we have. They didn't
5 have -- there was so much evidence that the federal
6 investigation uncovered that they did not have when they
7 charged this. The best they could do was making a
8 terroristic threat, and even Mr. Genco's defense counsel
9 thought that that was a stretch because it had never been
10 communicated. Mr. Monahan referenced, you know, the
11 Defendant's postings, this was never posted, this was
12 private.

13 (Indicating.) This was in his room and this was his
14 to-do list that he was following. He brought it back from
15 his trip and he worked through it for months. So let's look
16 at the first entry on this list here. The C4H8Cl2S, law
17 enforcement believes that's the chemical composition of
18 mustard gas. Not only does he have this mustard gas written
19 on this list, he does web searches for mustard gas in August
20 of 2019, and he wrote a note to himself on his phone that
21 one of his creation tasks was mustard gas.

22 Let's look at this next entry on this list, right
23 across, "OSU," believed to be a reference to Ohio State
24 University. The day before his arrest, he saved a screen
25 shot to his phone of a web search he had done of police

1 scanner codes for the Franklin County Police Department that
2 would respond to any sort of attack at Ohio State. He also
3 accessed Facebook pages for various Ohio State sororities.
4 This is not just a writing, a drunken rambling. This is his
5 to-do list. This is his guidepost.

6 (Indicating.) Now, look here, "M-16 is optimal,
7 convert per mil spec." So not only did he write that down,
8 but he researched online how to convert guns, and he in that
9 note -- the creation notes that he made to himself where he
10 mentioned mustard gas, he also mentioned making a "homemade
11 full auto," which we believe is a reference to making a
12 fully automatic weapon, which is what an M-16 would be, and
13 M-16 optimal but he can't get it, so he's going to get a mil
14 spec and convert it, like he said in his to-do list. He did
15 it, he converted his AK-47 to an automatic through the
16 attachment of a bump stock. And he took the gun that was
17 found in his room and he removed the rear rails and made
18 that an automatic weapon as well, that's a machine gun.
19 That is all after he joined the incel movement in at least
20 July of 2019. He admits to joining in July of 2019, and
21 after that point, whenever he purchased the guns, he
22 researched how to modify them and he modified them.

23 Let's look at the list here. "Will get arms training
24 in BCT Georgia." Now, contrary to what defense just
25 represented, it doesn't say: I'm going to join the military

1 because I want to be a part of a team, because I want to
2 learn how to control my dark thoughts. He wants arms
3 training, that's why he's going there, and, in fact, he did
4 exactly what was on his to-do list. He entered Army basic
5 training in Fort Benton, Georgia in between August of 2019
6 and December of 2019. While he's there, he's not looking up
7 how to be a better teammate, he's not looking up how to
8 control my dark thoughts. He's reading articles about mass
9 shootings.

10 After the part about the kill count where he's
11 intending to kill 3,000 people, question mark, he says:
12 "Need to write plot, take some writing classes," question
13 mark. Well, we know that he followed through with that. We
14 know that he wrote his manifesto in accordance with his
15 to-do list. That's Government Exhibit E to the sentencing
16 submission. This is not just a note. This is not just
17 drunken ramblings. This is his outline of steps that he
18 needs to take in order to accomplish his objective, the
19 objective that he admitted to in this court when he pleaded
20 guilty formulating a plot to kill women and intending to
21 carry it out.

22 And when we are talking about Federalism or debating
23 the merits of whether a state can bring a case or the Fed's
24 can bring a case, we are distracting ourselves from the
25 facts of this case. We are losing sight of what he admitted

1 to here and what the offense is that we're looking at. This
2 is not a threat case. This is more than a threat. This is
3 an attempt. He took substantial steps, the Court has
4 already found this. He had a plot. He wasn't just saying
5 he was going to do it, he was doing it. And as you said
6 earlier in this proceeding, but for law enforcement, he
7 would have carried it out by his own admission.

8 I want to talk about the comparable cases in addition
9 to *Jaques*. You mentioned the *Chan* case, the cyber stalking
10 case, and I would point out that, No. 1, cyber stalking
11 obviously is a different statute than what we're dealing
12 with here, but also it sounds like there was a single victim
13 in that case who was absolutely terrorized, but what we're
14 talking about here is a mass murder of potentially ideally,
15 according to his to-do list, in the thousands. I mean, he
16 had modified his weapons to be efficient killing machines.
17 We are looking at a potential victim pool that is much
18 larger than a single victim.

19 In terms of *United States versus Koch*, I prosecuted
20 that case, as you mentioned, and I would note that we
21 requested the cross-reference and the application to the
22 guidelines. We felt that that was just a brutal assault and
23 we should have cross-referenced away from the civil rights
24 guidelines in the applicable underlying offense. Your Honor
25 chose not to do the cross-reference at that time, and so the

1 guidelines range for the hate crime was much lower than it
2 would have been had the assault been cross-referenced in
3 that case. And as for his sentence of 30 months, the
4 government advocated for a much higher than that, and I will
5 note for the record that he never served that sentence. He
6 fled the country after he was allowed to self-report, so he
7 still never served that sentence.

8 THE COURT: The Court is aware of that. That's the
9 only fugitive I have from a trial, but Judge Barrett has
10 Dr. Durrani, which I think is probably even more
11 significant.

12 MS. GAFFNEY-PAINTER: Also, the *United States*
13 *versus Whitt* case, I prosecuted that case as well before
14 Mr. Barrett -- or excuse me, Judge Barrett, and he did
15 receive a sentence of 54 months. We asked for more than
16 that when we sought his sentence. But I will note that Mr.
17 Monahan represented that the attempted arson in that case
18 would have had a high likelihood of killing someone. The
19 home where Mr. Whitt turned on the gas and put the candle
20 and ripped out the smoke detector was empty at the time. It
21 was not occupied by anyone. There was no -- of course, had
22 that fire caught, it would have caused extensive damage, but
23 there was no evidence in that case that anyone lived there.

24 So it is not on par with what we're talking about here,
25 which is actually murdering someone. It seems that

1 Mr. Whitt's intention was to cause the destruction and fear
2 that he caused, but not necessarily to kill anyone. And I
3 assure you that, if we had evidence that he was trying to
4 kill someone, we would have charged that.

5 He pointed Your Honor to the *United States versus*
6 *Ferguson* case in the Sixth Circuit. I don't believe it's
7 worth much of the Court's time to have a legal argument
8 about whether this is attempt or not. He's already pleaded
9 guilty to it. But I will direct you to a page in that case,
10 this is on both 814 and 815, the Sixth Circuit found it
11 relevant that Ferguson had no timeline for his plan, let
12 alone an intent to execute it imminently. As you know from
13 the to-do list, he had a date in mind. There's the date
14 certain, May 23rd, 2020. He's got a countdown, 290 days.
15 His web searches also show that he was counting down how
16 many days, how many days until May 23rd.

17 They also note in the *Ferguson* case that *Ferguson* never
18 provided a date or timeline for his plan. He had no
19 location, no date or deadline, and not even a consistently
20 expressed goal regarding how he intended to carry it out.
21 Well, that's not this case. We have a location, we have a
22 date, we have a plan, and we have steps, multiple
23 substantial steps taken towards executing that plan.

24 There is no comparable case here. This is the first
25 hate crime prosecution of an incel in the entire United

1 States. The reason you could find no national comparison is
2 because there isn't one, this is the first. And an
3 intelligence analyst who researches extremists spoke to a
4 Cleveland newspaper recently and said that this, quote,
5 "would be a landmark case in gender-based violence, this is
6 the first."

7 And it's very important here for all of the reasons
8 that have already been articulated, but for some that are
9 not, to send a deterrence message to members of the incel
10 community about this hateful ideology and, should they take
11 steps to follow through with that ideology, that the
12 government will take it seriously. And we know, we know
13 that the incels are looking at this case. And how do we
14 know, because Your Honor received a letter on September 1st,
15 2021, from a group of interveners who called themselves
16 self-identified incels, and in their letter, they said,
17 quote, "we respectfully seek permission to intervene and ask
18 that the Court unseal and grant public access to two
19 exhibits." And later in the letter, they said, quote: "We,
20 the undersigned, are individual members of the public who
21 self-identify as members of the involuntary celibate incel
22 community. The prosecution of the defendant is of great
23 interest to us and to the general public."

24 The unusual nature of the Defendant's alleged
25 activities and alleged affiliation with the incel community

1 have made national and international news. This case is one
2 of the most prominent to date allegedly involving the incel
3 community. There is a need for general deterrence. This
4 sentence needs to provide general deterrence, and we have a
5 basis to conclude that the incels are watching, would pay
6 attention, and that it could have a deterrent effect.

7 But we not only need general deterrence, we need
8 specific deterrence here. Mr. Genco filed a letter with the
9 Court, eight pages to the Court. Nowhere in that letter
10 does he renounce his incel beliefs. He doesn't even use the
11 word "incel." In fact, the words he does use are quite
12 telling. On page 3, he quote: "At this time I came across
13 the community that would be my undoing and I wish never came
14 across. When you're so low, you become vulnerable to the
15 allure of misery and want more than anything understanding."
16 Note that this is his description of the incel community.
17 It's a community, first of all, and also "understanding," he
18 felt he got understanding from these people and their toxic
19 ideology.

20 And there is no evidence anywhere in this record from
21 the psychologist's reports, from the defense counsel, that
22 Mr. Genco has been deradicalized. He was immersed in this
23 philosophy. He espoused it. He believed it. He planned an
24 active mass murder in furtherance of it, and nothing in
25 these reports or the submissions engages with this concept

1 in any way. You can't just decide when you're this immersed
2 in this toxic-ness to just step away from it. You need
3 serious intervention, you need deradicalization, and we
4 can't even have him engaging with the word, engaging with
5 the facts, engaging with the community that he was a part of
6 it.

7 This is not a threat case. This is a case where we
8 need to engage with the actual facts, with the actual group
9 he was a part of, with the actual philosophy that they
10 espouse. We can't look away from it. And calling this a
11 threat case or comparing it to other threat cases really
12 minimizes the conduct here.

13 In his argument, Mr. Monahan said there's basically two
14 categories of offenses, those that are done and those that
15 are attempted and threatened. I disagree. Those are three
16 categories. Attempt is its own category. It should not be
17 lumped in with threats. It is further down the road,
18 involves substantial steps, involves more commitment to the
19 threat. It is not just about the subjective experience of
20 those that receive those words, but it's about actually
21 taking steps.

22 When we are looking to compare this case, instead of
23 comparing this case to other civil rights offenses, we
24 should consider comparing this case to domestic terrorism
25 cases because the incel movement presents a domestic

1 terrorism threat. This has been recognized not only by the
2 FBI, but by numerous other organizations throughout the
3 world, that the incels are a terroristic group. A court in
4 Canada found recently that they present a terroristic
5 threat.

6 A case that the Court could look to is *Chris Cornell*.
7 He was planning to do a shooting at the Capitol and was
8 arrested when he bought a gun and prepared to travel to the
9 Capitol. He got 25 years.

10 MR. MONAHAN: Judge, I don't believe these cases
11 have been cited in any filing by the government. I mean --

12 THE COURT: You're correct, you're correct. Yeah.
13 The Court has not seen any evidence of these cases. I think
14 if you wanted to cite them, there was plenty of time to file
15 them in all of the pleadings in all of the time you had.

16 MS. GAFFNEY-PAINTER: Certainly, but two days ago,
17 defense counsel introduced a case from another district
18 prosecutor, you know, defended by their office, and so now
19 it's become quite relevant to come up with comparable cases.
20 The government's position is this is a landmark case, it's
21 in its own realm. But if we need to compare cases,
22 comparing them to civil rights offenses about which, you
23 know, defense counsel didn't raise with, didn't raise *Koch*,
24 didn't raise *Chan*, it seems appropriate that I'm allowed to
25 respond with what I think would be a responsive case.

1 THE COURT: I don't think it's fair, Ms.
2 Gaffney-Painter.

3 MS. GAFFNEY-PAINTER: Okay. I'm happy to move on,
4 Your Honor.

5 In the defense submission and today again, they call
6 Mr. Genco's writings "dark thoughts," and I want to talk
7 about what those dark thoughts are. At one point, defense
8 counsel said there were only three writings; that's not
9 correct. So let's actually engage with the dark thoughts
10 that we're talking about here.

11 Searching Mr. Genco's web history, e-mails, and text
12 messages, there were 3,487 items containing the word
13 "incel." He posted over 450 times on an incel message
14 board, and I'd like to read some of those, a very small
15 selection of the numerous posts that he placed there.

16 Quote, "I sprayed some foids with three-week-old orange
17 juice unintentionally on ER's birthday." That's a reference
18 to Elliot Rodger, the mass shooter. "Their screams were
19 amazing. They were mega Stacy's too. Felt like I was
20 spiritually connected to the saint on that day. I drove up
21 to them saying hi and they didn't even look up, they just
22 went huh-uh, so they get sprayed in the fucking face. I
23 suggested to all incels, supremely inspiring action,"
24 unquote. Quote, "ha-ha, what a cuck, he got a girl on his
25 dick and she's trying to inflate his micro penis, any normal

1 dude would have grabbed her by the hair and literally
2 slammed her face into it. This sounds like a fake attention
3 whoring, teehee. I am so cute and naive, but still a whore
4 story on the foids end," unquote.

5 THE COURT: Where are these things that you're
6 reading from?

7 MS. GAFFNEY-PAINTER: These are postings that he
8 made on the incel site, which are also cited in our
9 sentencing memoranda.

10 MR. MONAHAN: If we could get dates that these
11 occurred so we can get a frame of reference.

12 MS. GAFFNEY-PAINTER: These are outlined in our
13 sentencing memorandum submitted months ago. These are
14 postings on incel. I don't have the exact date, but they're
15 in the time frame that he identified as an incel. He pled
16 to a certain date range. All of the posts that I'm reading
17 now were outlined in the sentencing submission.

18 THE COURT: All right. I'll take your word for
19 that.

20 MS. GAFFNEY-PAINTER: Quote, "I saw a husband
21 grabbing his wife by the shoulders and shaking her and then
22 slapping her in public while I was night walking at
23 3:00 a.m. I didn't do shit about it. Foid chose that fate,
24 ha-ha." And then post quote, "revenge will be sweeter than
25 any woman," end quote.

1 He published a Kik message to a public group called
2 hashtag sociopathsclusterB. In that, he wrote: "I was in
3 an incel that got removed for saying I wanted to rape women.
4 I said I wanted to kidnap women and rape/murder them." When
5 did he post that? When he was in Georgia for basic training
6 getting that arms training that was on his to-do list.

7 He conducted numerous troubling web searches which
8 we've covered before, including, quote: "When I see a
9 woman, I wonder what her head would look like on a stick."
10 And then he saved a number of disturbing pictures and memes
11 on his phone, a couple of which we admitted with our
12 sentencing submission. This is Government Exhibit A to the
13 sentencing submission. This is Adam Lanza depicted here who
14 was responsible for the Sandy Hook mass shooting.

15 MR. MONAHAN: Was that "A"? I'm sorry, I'm just
16 trying to hear.

17 MS. GAFFNEY-PAINTER: "A."

18 MR. MONAHAN: Thank you.

19 MS. GAFFNEY-PAINTER: (Indicating.) This is a
20 redacted version of the picture that was found on his phone.
21 This is attached to government's sentencing submission,
22 Government Exhibit B. These are more than dark thoughts.
23 This is more than dark thoughts or even dark threats. These
24 are dark plans. He did dark plans. The Court covered this
25 earlier in this proceeding outlining all of the steps both

1 in your order and in your oral recitation here to the
2 defendant of the steps that he took that showed he
3 absolutely, consistent with his plea, intended to carry this
4 out. So we have these dark plans, the to-do list that he
5 was following.

6 We also have dark steps taken in furtherance of those
7 plans. (Indicating.) This is a photograph, this was
8 attached to the government sentencing submission, Government
9 Exhibit C, shows him modeling the mask. Here he is posing
10 with his hands and the gun and the mask.

11 (Indicating.) This is Government Exhibit G. This was
12 attached to our sentencing submission. This shows one of
13 the modified weapons. This is the trunk of his car. As
14 Your Honor pointed out in your order, this suggests that
15 this plan was imminent and he was preparing to execute his
16 plan. And then there's another modified weapon, this was
17 found in his bedroom. This is Government Exhibit H that was
18 attached to our sentencing submission.

19 By painting this as simply dark thoughts and making
20 arguments about Federalism and bringing up cases decided
21 after his plea about attempt, it's a walking back, it's a
22 walking back of what was admitted to here, and even his
23 submission to the Court attempts to explain away or walk
24 back what he did here. In that submission, this is page 5,
25 he claims that the ADHD medication that he was placed on led

1 to, quote, "a cascade of blunders" one, quote, "which
2 resulted in the discovery of my long forgotten, I was
3 shooked to my core and recall breaking down crying in the
4 ensuing interrogation pleading that I had not intended to I
5 still plead and will to the end of my days," end quote. But
6 that is directly in conflict with what he said here before
7 you under oath. Quote, "Genco considered himself a member
8 of the incel movement. Genco formulated a plot to kill
9 women and intended to carry it out." As you wrote in your
10 order, quote, "although his admissions are enough, the Court
11 also notes that Genco took many steps that set forth in the
12 PSR." "In short, he had acquired and prepared the means to
13 complete his plot, and having weapons and ammunition in his
14 vehicle suggests to the Court that he was getting ready to
15 act." And, finally, very well said: "His conduct is more
16 reprehensible than an attempted hate crime."

17 Even by the Court's recognition, this is a case in and
18 of itself. This is not comparable to an attempted hate
19 crime; it is more reprehensible. And the seriousness of
20 this crime, set aside everything else, if we just focused on
21 the 3553(a) factor that is about the seriousness of the
22 offense, just that alone is sufficient to support the
23 presumptively reasonable cap proposed here by the parties,
24 which is 150 months; that is middle of the guidelines here.
25 A variance is not warranted. The crime alone, but we also

1 have all of the other factors, including general and
2 specific deterrence, and including no recognition at any
3 point of the true depth of what the Defendant was engaged in
4 and what he planned. There is just minimisation from start
5 to finish, except in his plea agreement.

6 For all of these reasons and the reasons outlined in
7 our numerous submissions, Your Honor, we submit that no
8 variance is warranted here and sentencing him to the
9 presumptively reasonable middle of the guidelines 150-month
10 sentence is what's warranted by this conduct.

11 THE COURT: Thank you, Ms. Gaffney-Painter.

12 Mr. Monahan, if you're going to be a while, do you want
13 a break first?

14 MR. MONAHAN: I don't need one. I can probably be
15 done in about 5 minutes, Judge. I just have a few points.

16 THE COURT: Okay, that's fine.

17 MR. MONAHAN: Let's leave that on, Bill. I
18 actually want to put an item up.

19 I want to correct a few things that I do think are
20 important to be corrected. Ms. Gaffney largely dismissed
21 paying attention to the state case because she said that
22 they didn't have the evidence in the state that we have
23 federally, and I believe she even said the words they had
24 "no forensic evidence." I believe that to be completely
25 untrue.

1 I obtained the discovery that the state attorney had in
2 state court. They actually had the FBI Domestic Terrorism
3 Case Mobile Device Extraction and Analysis, which was
4 prepared April of 2020. That was one month after his
5 arrest. That was five months before sentencing. I think
6 that that was just an inaccurate statement to the Court.

7 I'm also going to point out that in this packet that I
8 received, we have the mask that was found in the phone. We
9 have the picture she just showed you as an exhibit found in
10 the phone in April of 2020. We have the gun picture. We
11 have the unfortunate picture of the two naked women with the
12 gun on a bed. These are pictures she just showed you acting
13 like this is new evidence they have. They had this in state
14 court, they had it in April of 2020.

15 It is simply not correct that the state didn't have all
16 of the evidence. They had all of the same things she's
17 showing you today in a forensic report prepared in April of
18 2020, so please don't pay attention to that distraction.

19 The Greece list, the one-page list she showed you with
20 the handwriting, that was written in August of 2019. It is
21 one page. We know he was largely incarcerated (sic) on that
22 trip, that was September, October, November, December,
23 January, February, March, seven months before his arrest,
24 nine months before the May date. There was a one-line about
25 a May date in that letter, nine months before that.

1 Remember what *Ferguson* said, Government, show me one case
2 where an attempt has been supported by something that had
3 happened more than a month before the incident. Nine
4 months.

5 The hideous symphony document that she showed you that
6 was typewritten and put on the overhead, that was written,
7 according to the indictment, on August 3rd of 2019, again,
8 seven months before arrest, nine months before May, while
9 he's in Greece. So again, yes, they're bad-sounding
10 documents, I'm not telling you they don't sound bad, just
11 consider the context and the time frame in which they were
12 written.

13 And now fast forward to he's doing -- he's writing
14 messages that the government found in his phone that he's no
15 longer involved with incel, he's trying to get away from
16 incel, he doesn't like how violent these are. These are not
17 self-serving messages he's telling you. These are things
18 that he has written and that they found in his phone. They
19 could argue to you it's self-serving. Incel isn't even in
20 his mind anymore. He didn't write about incel because it's
21 not a part of his life anymore.

22 I have to mention the *Whitt* case. Ms. Gaffney-Painter
23 again minimized the *Whitt* case and she actually said the
24 words to you: Well, the candle being lit with the gas being
25 left on and the smoke detector being pulled out, she said

1 that was an apartment that was abandoned at the time so it
2 had no risk of hurting anybody. I just wanted to read you
3 what she wrote in her sentencing memo about that. "An
4 African American male returned from Thanksgiving vacation to
5 check on his two-family property on Seton Avenue in Price
6 Hill. What he encountered at the Price Hill house was an
7 exceedingly disturbing crime. Cans of paint were splattered
8 on the walls, stairs and appliances. Large holes were
9 beaten in walls. The stairwell bannisters were broken. The
10 carpet was torn. Quikrete had been poured in the drains and
11 toilets. The plumbing traps were removed from two sinks and
12 the water was left running causing the ceiling to collapse.
13 The floor sustained water damage and the basement flooded.
14 A butcher knife was menacingly stabbed in the floor." The
15 gas stove on the second floor unit -- again, acknowledging
16 this is one of the two units in the building. I'm not sure
17 how this didn't risk hurting somebody. "The gas stove to
18 the second floor unit was left with on with a candle next to
19 it while the smoke alarm above had been ripped off the
20 ceiling. Spray painted anonymous -- I'm sorry, ominously on
21 the walls were the messages -- and I pardon me for the
22 language, I'm just reading it, I'm just going to say die
23 with the "N" word, the "N" word written several times, white
24 power, slum lord, and swastikas.

25 So again, her interpretation of the facts at the time

1 of the case is significantly more egregious than her
2 interpretation of the facts here before you. And I'm not
3 sure how a two-family dwelling where this was on the second
4 floor, that won't be a risk of harm to someone, even if that
5 particular apartment wasn't occupied at the time.

6 MS. GAFFNEY-PAINTER: Your Honor, just as a point
7 of clarity, neither apartment was occupied. And I, of
8 course, stand by everything I wrote in that sentencing
9 submission. That crime was incredibly disturbing, deserved
10 a significant sentence, but it wasn't attempted murder.

11 MR. MONAHAN: She read you a bunch of posts, I
12 don't know what those dates were. I'm speculating they were
13 way back in August of 2019, but it's impossible to tell.
14 Maybe it was in Greece, I don't know.

15 I think after listening to all of that, a comment to
16 make is Mr. Genco in all of this never actually encountered
17 a woman. He never threatened a woman. He never interacted
18 with a woman. He did all of this stuff in his imaginary
19 online world. It's still disturbing and it's still wrong,
20 but just keep that perspective. It's one thing to go do a
21 crime, it's another thing to talk a lot about doing a crime
22 and think about doing a crime, which is what he did. I'm
23 not trying to, you know, candy coat this more than it can be
24 candy coated, but I do want to point out that the man never
25 encountered a woman. He didn't share any of these thoughts

1 with a woman. No victim knew that he had these thoughts,
2 not one.

3 Finally, I want to say the government kind of finished
4 telling you that a sentence within the guideline range is
5 presumptively reasonable, and I've heard prosecutors say
6 this before. I want to be very clear, that is an appellate
7 standard, that is not the standard that a district judge
8 applies. I have to consider the guidelines to be
9 presumptively reasonable. What you must do is determine a
10 sentence that is sufficient but not greater than necessary
11 to meet the statutory purposes of sentencing, and I didn't
12 want that indication about presumptive reasonableness to
13 sway you in any way because, candidly, that's not what this
14 Court considers.

15 I have nothing further to add. I do want to remind
16 that Mr. Genco does need to be afforded an opportunity for
17 allocution and that I am completed with my presentation.

18 THE COURT: Okay. I'm sorry, did I not give him an
19 opportunity?

20 MR. MONAHAN: Yes, we never got back to him
21 actually to allocute.

22 THE COURT: I apologize.

23 MR. MONAHAN: Which is fine, we were going to do it
24 last anyway.

25 THE COURT: Yes.

1 MS. GAFFNEY-PAINTER: Your Honor, may I have a
2 brief moment to respond just to a single point raised in Mr.
3 Monahan's presentation?

4 THE COURT: All right.

5 MS. GAFFNEY-PAINTER: He said that at no point
6 during this case did Mr. Genco encounter a woman, and, as
7 you know, that's not correct. This whole case came to our
8 attention because he threatened his mother. His mother
9 heard him cocking a gun in his room and he had threatened to
10 harm her, and she called 911 to report it. So he did
11 encounter a woman, she did feel fear, and that's how this
12 case started.

13 MR. MONAHAN: He was not even charged with domestic
14 violence, to my knowledge, so that could have been a state
15 misdemeanor domestic violence charge, but that was never
16 pursued. So, yes, he encountered his mother daily, we would
17 certainly submit that that's true.

18 THE COURT: Okay. Mr. Genco, I'm sorry, anything
19 you would like to say, sir?

20 THE DEFENDANT: Yes, Your Honor. Am I supposed to
21 stay at the podium? I don't know.

22 THE COURT: You can do it from wherever you're most
23 comfortable. If you're most comfortable sitting, fine. If
24 you want to stand at the podium, that's fine too.

25 THE DEFENDANT: Thank you. I want to kind of

1 reference something for the sake of interpretation. I
2 didn't want to be misinterpreted. I completely disavow
3 incel in any way, shape or form; I have from even before
4 when was I was arrested. So I just wanted to kind of
5 reference that. If I didn't properly reference that, that's
6 a failure on my end.

7 Your Honor, to be before you today is my recognition of
8 the deepest remorse, my greatest mistake, and also the grief
9 upon which I inflict on those who I am blessed to call loved
10 ones, friends, and family. This mistake is mine, I
11 acknowledge fully. But I will not worsen it by failing to
12 recognize this and let it evolve into a life-long collapse
13 of responsibility. What I thought and wrote in delusion
14 feels completely foreign to me. It is wrong in so many ways
15 and is a betrayal to the person I've been all my life.

16 I'm so sorry for my actions and how I've affected
17 others. This remorse has hurt me more than any brick wall
18 or cold steel in this whole experience. Never will I permit
19 the circumstances that have made the sun and sky stranger to
20 me, never will I neglect and ignore my mental health again.
21 My ignorance resulted in exponential pain and grief not
22 conceivable in delirium, but painfully clear in sobering
23 hindsight. The misery I have experienced has given way to
24 clarity and perspective, and reflection has given me a
25 life-long dedication to being the helping hand I wish I had

1 in the past.

2 Your Honor, I implore you in only the way whose fate is
3 in your hands may that you do not see me for the boy I was,
4 but the man I am today. I am pleading for the opportunity
5 for redemption. Any chance I may have to develop, whether
6 it be referencing my mental health with therapy or
7 furthering my education or working as I was in the halfway
8 house, you will see me work vigorously. My aspiration is
9 that I may live a life that reflects empathy and compassion
10 in every facet and to live a life that reflects love for
11 this world.

12 I feel like while a lot of the situation has been about
13 me and about the mistakes I've made, but I've also hurt a
14 lot of people coming here. I've hurt my family. I've hurt
15 friends. I've -- of course, if I've caused any anxiety or
16 stress to people, I just want to apologize. And that's all,
17 Your Honor. Thank you for listening.

18 THE COURT: Thank you very much, Mr. Genco.

19 Anything else?

20 MR. MONAHAN: No, Your Honor.

21 MS. GAFFNEY-PAINTER: No, thank you, Your Honor.

22 THE COURT: We're going to take a 10-minute break.

23 THE DEPUTY: All rise. Court is now in recess
24 until 12:15.

25 (Recess taken from 12:07 p.m. to 12:23 p.m.)

1 THE DEPUTY: All rise. This court is now in
2 session pursuant to the recess. Please be seated.

3 MR. MONAHAN: Do you want us at the podium?

4 THE COURT: You're fine there.

5 MR. MONAHAN: Thank you, Judge.

6 THE COURT: As you all know, this case has been
7 pending for a long time, and that was primarily because this
8 was an extremely serious allegation and I wanted to make
9 sure that everything was completely investigated. I wanted
10 to find out more about Mr. Genco's mental health, and the
11 opinion of the doctor was helpful. I have given this a
12 tremendous amount of thought already. When I compare him to
13 the national statistics, I feel that the sentence I'm about
14 to pronounce is comparative to those. Mr. Genco's
15 allocution, I find him very sincere, one of the most sincere
16 statements I've ever heard. I'm also impressed with the
17 couple who is here whose son he befriended, that says a lot
18 about the kind of person he's become.

19 This is a unique case, but I think I come out where the
20 doctor who last examined you came out, that I believe in
21 your rehabilitation and I think you have been and will
22 continue to work on it. We judges wish we had a crystal
23 ball and know how these things come out, but we don't. So
24 we have to make our best judgment.

25 So it's the duty of the Court to sentence the Defendant

1 at this time; however, counsel will have a final chance to
2 make legal objections before the sentence is actually
3 imposed. And for all of the reasons I've just mentioned --
4 let me find one thing here.

5 (Pause.)

6 I've looked at the guidelines. Mr. Genco is currently
7 a 33, I. If I go back to a 30, which is still a very
8 significant amount of time, instead of being a 135 to 168,
9 the sentence would be 97 to 121 months, and I feel that's
10 much more in line with the national statistics than the
11 suggestion of what a 33 is.

12 For that reason, and pursuant to the Sentencing Reform
13 Act of 1984, and 18 U.S.C. Section 3553(a), it's the
14 judgment of the Court that Mr. Genco is hereby committed to
15 the custody of the United States Bureau of Prisons -- I
16 would give you, Mr. Genco, a 97-month sentence, which is
17 what you would get if you were -- if the crime were a 30,
18 which is very significant offense, and Criminal History I,
19 but since you served already 17 months for exactly the same
20 conduct, I think you should get credit for that time. I
21 know the Bureau of Prisons would not give you credit for
22 time that you served in state custody. I often do this, if
23 the Bureau of Prisons is not going to give credit for the
24 time served in state custody for exactly the same conduct, I
25 deduct that from the sentence that goes to the Bureau of

1 Prisons.

2 So you were in state custody for 17 months. I'm
3 deducting that from the 97, so I come up with a final amount
4 of 80 months. And that would be if this were an offense
5 level of 30 instead of a 33, which I don't think is much of
6 a variance.

7 Upon release, you shall serve a term of supervised
8 release of five years, which is also another way to build in
9 some security that you will continue to keep your mental
10 health up. Within 72 hours of release from imprisonment,
11 you must report to the probation office in the district to
12 which you are released.

13 During your term of imprisonment, the Court believes
14 you would benefit from mental health treatment, vocational
15 training, and an apprenticeship program.

16 While on supervision, you must not commit another
17 federal, state or local crime. You're prohibited from
18 possessing a firearm, ammunition, destructive device, or
19 dangerous weapon. You must not unlawfully possess a
20 controlled substance. You must refrain from any unlawful
21 use of a controlled substance. The Court finds a low risk
22 of future substance abuse on the part of the Defendant; and,
23 therefore, pursuant to 18 United States Code Section 3583D,
24 the Court is waiving the requirement of mandatory drug
25 testing. You must cooperate in the collection of DNA as

1 directed by the probation officer.

2 And you need to comply with the standard conditions of
3 supervision that have been adopted by this court as well as
4 the following special conditions. First, you need to -- you
5 should participate -- the Court is going to order that you
6 do participate in a program of mental health assessment
7 and/or counseling as directed by the United States probation
8 office until such time as you are released from the program
9 by the probation office. You shall make a copayment for
10 treatment services not to exceed \$25 per month, which will
11 be determined by your ability to pay.

12 Second condition is that you shall participate in a
13 vocational services program as directed by the probation
14 officer, and this is all when you get out from prison. Such
15 program may include on-the-job training, job readiness
16 training, and skills development training. I think you'll
17 be in the custody of the Bureau of Prisons certainly for
18 enough time to be able to take one or two apprenticeship
19 programs. So you'll have the opportunity to learn something
20 that you can do that you can use as for employment on the
21 outside.

22 It's ordered that you shall pay a special assessment in
23 the amount of a hundred dollars, which is due immediately.

24 And, finally, the Court considers the sentence to be
25 just and reasonable in light of the Defendant's conduct and

1 the applicable sentencing factors.

2 I have some questions, Mr. Genco, I want to ask you. I
3 can make a recommendation as to which prison facility you be
4 sent to. Normally, it's a geographic recommendation, like
5 closest to Cincinnati, but if for some reason, you want to
6 go to another institution that has different apprenticeship
7 programs or whatever, I can request that. The Bureau of
8 Prisons does not have to follow my recommendation, but they
9 generally try to do so, if they can.

10 MR. MONAHAN: He did, Judge, actually do some
11 research related to programming that he might be interested
12 in. And he would like you to recommend either Milan, which
13 is Michigan, M-I-L-A-N, Michigan, or Elkton, E-L-K-T-O-N.

14 THE COURT: Wait, say that again.

15 MR. MONAHAN: Elkton, E-L-K-T-O-N, Ohio.

16 THE COURT: Yes, I'm familiar with Elkton. The
17 Court will recommend Milan, Michigan, or Elkton, Ohio.

18 I'd also like to recommend that you participate in any
19 type of apprenticeship program that's offered by the Bureau
20 of Prisons. Do you want me to make that recommendation?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Is there a particular apprenticeship
23 program you want me to recommend you for?

24 THE DEFENDANT: If there's a possibility for any
25 college credit or courses, I'd be grateful to have that

1 opportunity.

2 THE COURT: I'll put that in there, you know,
3 college courses, if possible, if available, in addition to
4 the apprenticeship program.

5 I also want to recommend one more thing. I know I've
6 recommended mental health counseling when you get out of
7 prison. I'd also like to for you to have mental health
8 counseling during the time you're in the Bureau of Prisons,
9 and so I'm going to put that in the judgment and commitment
10 order.

11 Mr. Monahan, do you have any objections as to why this
12 sentence should not be imposed as stated?

13 MR. MONAHAN: We're not -- we're going to add
14 nothing. I mean, you heard all of our presentation earlier
15 today and why we thought the sentence we requested was
16 appropriate. I would comment that probation and the PSI
17 actually recommended credit for the state sentence, so we
18 appreciate you considering that and awarding that time.

19 THE COURT: Yeah. And I always do that, I think,
20 you know, when somebody is serving time for exactly the same
21 conduct, they ought to get credit for that, and I know the
22 Bureau of Prisons doesn't give credit for state sentences,
23 so I always do.

24 Ms. Gaffney-Painter, do you have any objections?

25 MS. GAFFNEY-PAINTER: Well, first, a point of

1 clarity. You mentioned going from a 33 to a 30; is that a
2 departure or a variance, Your Honor?

3 THE COURT: A variance.

4 MS. GAFFNEY-PAINTER: A variance, all right. The
5 government does have objections to the sentence. First, we
6 lodge an objection under 18 U.S.C. 3553(a)(2). We also
7 lodge an objection under Title 18 United States Code
8 Section 3553(a)(6). And we also lodge an objection to the
9 determination that making a terroristic threat in state is
10 the exact same crime as an attempted hate crime.

11 THE COURT: Would you explain what 3553(a)(2) and
12 (a)(6) are?

13 MS. GAFFNEY-PAINTER: Sure. 3553(a)(2) involves
14 the seriousness of the offense and also the deterrence that
15 must be considered when evaluating the sentence. (a)(6) is
16 to avoid unwarranted sentencing disparities.

17 THE COURT: Okay. Thank you.

18 All right. I need to advise you of your appellate
19 rights, Mr. Genco. Under some circumstances, you have a
20 right to appeal a sentence. However, a defendant may waive
21 that right as part of a plea agreement, and you have entered
22 into a plea agreement which waives some or all of your
23 rights to appeal the sentence itself. Such waivers are
24 generally enforceable, but if you believe the waiver itself
25 is not valid, you can present that theory to the appellate

1 court. If you're indigent and cannot retain a lawyer, you
2 may apply and one will be appointed to represent you on your
3 appeal. You're further advised that, in accordance with the
4 provisions of Rule 4B of the Rules of Appellate Procedure,
5 you must file your notice of appeal with the clerk of the
6 United States District Court within 14 days of the filing of
7 this judgment.

8 The Court does hereby advise you that, if you so
9 request, I can order the clerk of courts to prepare and file
10 immediately a notice of appeal on your behalf, or I can ask
11 Mr. Monahan to protect your appellate rights. Would you
12 like me to ask Mr. Monahan to do that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. It's further ordered that
15 you need to notify the United States Attorney for the
16 Southern District of Ohio within 30 days of any change in
17 resident or mailing address until the special assessment of
18 \$100 imposed by this judgment is fully paid.

19 Are there any other objections?

20 MS. GAFFNEY-PAINTER: No, thank you, Your Honor.

21 MR. MONAHAN: We have no further objections, Your
22 Honor.

23 THE COURT: Okay. Thank you, everyone. Mr. Genco,
24 good luck to you.

25 THE DEFENDANT: Thank you, Your Honor.

1 THE DEPUTY: All rise. Court is now in recess
2 until 2:00.

3 (Proceedings concluded at 12:37 p.m.)

4 **C E R T I F I C A T E**

5 In accordance with 28 U.S.C. Section 753, I certify
6 that the foregoing is a correct transcript of the record of
7 proceedings in the above-entitled matter prepared from my
stenotype notes and that the transcript page format is in
accordance with the regulations of the Judicial Conference
of the United States.

8 /s/ Lisa Conley Yungblut 03/13/2024
9 LISA CONLEY YUNGBLUT, RDR, RMR, CRR, CRC DATE